

**Senate**

**Regular Calendar**

**Amendment Packet**

**Thursday, April 4, 2013**



SA0092

Amendment No. 1

*Kelsey*

Signature of Sponsor

<b>FILED</b>	
Date	<u>3/13/13</u>
Time	<u>1:15</u>
Clerk	<u>SL</u>
Comm. Amdt.	<u>1</u>

**AMEND Senate Joint Resolution No. 103\* <HB>**

by deleting the first resolving clause and substituting instead the following:

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDREDTH EIGHTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that a majority of all the members elected to each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed:

That Article III, Section 12 of the Constitution of Tennessee be amended by adding the following language immediately following the current language in the Section:

Whenever the Governor transmits to the Secretary of State, the Speaker of the Senate, and the Speaker of the House of Representatives, a written declaration that the Governor is unable to perform the powers and duties of the office, the powers and duties of the office of Governor shall be exercised by, the Speaker of the Senate, if that office is unoccupied, then the Speaker of the House of Representatives. The powers and duties of the office shall return to the Governor when the Governor transmits to the same officials, a written declaration that the Governor is able to perform the powers and duties of the office.

When a Speaker is exercising the powers and duties of the office of Governor, such Speaker shall not be required to resign the Speaker's position as the Speaker or to resign as a member of the general assembly, if it is reasonably expected that the



Governor will be able to resume the powers and duties of the office of Governor. If a Speaker is exercising the powers and duties of the office of Governor, such Speaker shall not preside as Speaker or vote as a member of the general assembly during the time the speaker is exercising those powers and duties.

When a majority of the Speaker of the House of Representatives, the Speaker of the Senate, the Secretary of State, the Treasurer and the Comptroller of the Treasury certify that the Governor is unable to perform the powers and duties of the office, then the Speaker of the Senate shall immediately assume the powers and duties of the office as Acting Governor. When the Governor transmits to the Speaker of the House of Representatives and the Speaker of the Senate his written declaration that no inability exists, he shall resume the powers and duties of the office.

The general assembly shall have the power to enact laws in accordance with this Article III, Section 12.



SA0237

Amendment No. 1

R. McNally  
Signature of Sponsor

FILED

Date 3/25/13

Time 4:05

Clerk ARB

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 63\***

**House Bill No. 228**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 10, is amended by adding the following language as a new section:

(a) The department of finance and administration shall monitor, and cause to be audited by its qualified independent auditor, the pharmacy benefit manager's compliance with any state pharmacy benefits management contract. The commissioner of finance and administration, or the commissioner's designee, shall report, by July 1st of each year, on the pharmacy benefits manager's contract compliance to the speaker of the senate, the speaker of the house of representatives and the fiscal review committee.

(b) In order to comply with subsection (a), the department shall, after one (1) year of entering into or renewing any state pharmacy benefits management contract, annually perform a single risk assessment to determine those areas of the contracts that pose the greatest risk of noncompliance, fraud, waste and abuse. Upon completion of the risk assessment, the department shall incorporate the results of the risk assessment into its audit and monitoring plan. The department shall update the risk assessment when contract amendments result in additional risks of noncompliance, fraud, waste, or abuse. The department shall consult with the office of the comptroller of the treasury in determining the scope and extent of the audit and monitoring plan procedures. The department may submit the updated audit and monitoring plan, along with any audit or monitoring findings, to comply with the reporting requirement in subsection (a).



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(c) The audit and monitoring plan shall address all state pharmacy benefits management contracts and be designed to examine source documentation whenever such documentation is available. The plan shall include, but not be limited to, a review of:

- (1) Repricing of pharmacy claims at the drug level;
- (2) Validation of the national drug code (NDC) usage;
- (3) Appropriateness of the nationally recognized reference prices, or average wholesale price (AWP), in accordance with § 56-7-3104;
- (4) Eligibility of beneficiaries for pharmacy claims paid;
- (5) For pharmacy benefits contracts entered into or renewed on or after July 1, 2013, reconciliation of the pharmacy benefits manager's payments to pharmacies with the state's reimbursement to the pharmacy benefit manager;
- (6) Confirmation that the pharmacy benefits manager's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one (1) or more pharmacies;
- (7) Recalculation of discount and dispensing fee guarantees;
- (8) Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the pharmacy benefit manager;
- (9) Review of rebate contracts between the pharmacy benefit manager and five (5) drug manufacturers, to be selected by the benefits administration division of the department, and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;
- (10) Comparison of total rebates collected by the PBM (pass-through rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two (2) amounts;

(11) Monitor the activities of the pharmacy benefits manager to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services; and

(12) Consideration of other industry related risks to reduce the risk of financial losses due to fraud, waste and abuse.

(d) The department shall seek appropriate remedies for contract noncompliance and occurrences of fraud, waste or abuse that are discovered through monitoring or audits.

(e) The department shall have the authority to contract with a qualified independent auditor experienced in conducting pharmacy audits for auditing the pharmacy benefit manager's compliance with the contract. No contracted qualified independent auditor shall subcontract any part of the plan described in this section without the express written approval by the commissioner, or the commissioner's designee, and notification in writing to the comptroller of the treasury.

(f) This section shall apply to any state or local health insurance plan established under title 8, chapter 27.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



SA0324

Amendment No. 2

Signature of Sponsor

<b>FILED</b>	
Date	3/28/13
Time	2:30
Clerk	ARB
Comm. Amdt.	

**AMEND Senate Bill No. 63\*****House Bill No. 228**

by deleting all language after the enacting clause and by substituting instead the following:

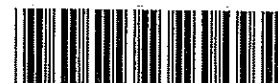
SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 10, is amended by adding the following language as a new section:

(a) The department of finance and administration shall monitor, and cause to be audited by its qualified independent auditor, the pharmacy benefit manager's compliance with any state pharmacy benefits management contract. The commissioner of finance and administration, or the commissioner's designee, shall report, by July 1st of each year, on the pharmacy benefits manager's contract compliance to the speaker of the senate, the speaker of the house of representatives and the fiscal review committee.

(b) In order to comply with subsection (a), the department shall, after one (1) year of entering into or renewing any state pharmacy benefits management contract, annually perform a single risk assessment to determine those areas of the contracts that pose the greatest risk of noncompliance, fraud, waste and abuse. Upon completion of the risk assessment, the department shall incorporate the results of the risk assessment into its audit and monitoring plan. The department shall update the risk assessment when contract amendments result in additional risks of noncompliance, fraud, waste, or abuse. The department shall consult with the office of the comptroller of the treasury in determining the scope and extent of the audit and monitoring plan procedures. The department may submit the updated audit and monitoring plan, along with any audit or monitoring findings, to comply with the reporting requirement in subsection (a).



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(c) The audit and monitoring plan shall address all state pharmacy benefits management contracts and be designed to examine source documentation whenever such documentation is available. The plan shall include, but not be limited to, a review of:

- (1) Repricing of pharmacy claims at the drug level;
- (2) Validation of the national drug code (NDC) usage;
- (3) Appropriateness of the nationally recognized reference prices, or average wholesale price (AWP), in accordance with § 56-7-3104;
- (4) Eligibility of beneficiaries for pharmacy claims paid;
- (5) For pharmacy benefits contracts entered into or renewed on or after July 1, 2013, reconciliation of the pharmacy benefits manager's payments to pharmacies with the state's reimbursement to the pharmacy benefit manager;
- (6) Confirmation that the pharmacy benefits manager's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one (1) or more pharmacies;
- (7) Recalculation of discount and dispensing fee guarantees;
- (8) Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the pharmacy benefit manager;
- (9) Review of rebate contracts between the pharmacy benefit manager and five (5) drug manufacturers, to be selected by the benefits administration division of the department, and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;
- (10) Comparison of total rebates collected by the PBM (pass-through rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two (2) amounts;



(11) Monitor the activities of the pharmacy benefits manager to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services; and

(12) Consideration of other industry related risks to reduce the risk of financial losses due to fraud, waste and abuse.

(d) The department shall seek appropriate remedies for contract noncompliance and occurrences of fraud, waste or abuse that are discovered through monitoring or audits.

(e) The department shall have the authority to contract with a qualified independent auditor experienced in conducting pharmacy audits for auditing the pharmacy benefit manager's compliance with the contract. No contracted qualified independent auditor shall subcontract any part of the plan described in this section without the express written approval by the commissioner, or the commissioner's designee, and notification in writing to the comptroller of the treasury.

(f) This section shall apply to any state or local health insurance plan established under title 8, chapter 27.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



SA0320

Amendment No. 1

Signature of Sponsor

FILED

Date 3/28/13Time 2:30Clerk ARBComm. Amdt. 1

AMEND Senate Bill No. 109

House Bill No. 39\*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-4-120, is amended by adding the following language as new, appropriately designated subsections:

(j) In addition to the schools currently operated pursuant to this section, the board shall establish rules and regulations for separate schools that specialize solely in natural hair styling, manicuring and the practice of aesthetics; provided, at a minimum, such specialized schools remain subject to the requirements of this section.

(k) Notwithstanding any law to the contrary, the board shall establish rules and regulations enabling schools operated pursuant to this section to develop apprentice programs that offer students:

(1) Who have not completed one thousand five hundred (1,500) hours of credit in practice and theory, the option of satisfying such credit hour requirement by instead:

(A) Earning seven hundred fifty (750) hours of credit in practice and theory from classroom training; and

(B) One thousand five hundred (1,500) hours of credit from apprenticing under the supervision of a cosmetologist licensed pursuant to this chapter, who has at least ten (10) years experience; or

(2) Upon completion of one thousand five hundred (1,500) hours of credit in practice and theory from classroom training, the option of apprenticing under the supervision of a cosmetologist licensed pursuant to this chapter, who has at



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least ten (10) years experience, for a period not to exceed six (6) months from the time of completion of the credit hour requirement described in this subdivision (k)(2).

(l) In addition to any requirements in § 62-4-114, the board shall establish continuing education requirements for cosmetologists, who are licensed pursuant to this chapter on or after July 1, 2013; provided, schools operated pursuant to this section shall solely offer the courses required to meet such requirements and may offer such courses through an electronic medium. Half of all fees collected by the schools from participants in the courses shall be transmitted by the schools to the board.

SECTION 2. The state board of cosmetology is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Uniform Administrative Procedures Act, Title 4, Chapter 5.

SECTION 3. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2013, the public welfare requiring it.



SA0270

Amendment No. 1

Crowe  
Signature of Sponsor

FILED
Date <u>3.27.13</u>
Time <u>5:15PM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 132\***

**House Bill No. 261**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Education to End Poverty Act".

SECTION 2. Tennessee Code Annotated, Section 71-3-104(h)(2)(B)(i), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(i)

(a) The children in the family attend and maintain satisfactory academic progress in school as defined in subdivision (h)(2)(C)(ii). These requirements apply to any child who does not have an individualized education program (IEP) or who is intellectually gifted; or

(b) The children in the family attend school. This requirement applies to any child who has an IEP and who is not intellectually gifted;

SECTION 3. Tennessee Code Annotated, Section 71-3-104(h)(2)(C), is amended by deleting subdivision (ii) in its entirety and by substituting instead the following:

(ii)

(a) Failure to comply with the requirements of a personal responsibility plan under subdivision (h)(2)(B)(i), without good cause, shall result in the parent or caretaker relative receiving a child only grant for the parent or caretaker until such time as compliance occurs.



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(b) As used in this subdivision (h)(2)(C)(ii):

(1) "Failure to comply with the personal responsibility plan under subdivision (h)(2)(B)(i)(a)" means failure of a child to comply with attendance requirements under title 49, chapter 6, part 30 or subdivision (g)(9); or failure of a child to maintain satisfactory academic progress;

(2) "Failure to comply with the personal responsibility plan under subdivision (h)(2)(B)(i)(b)" means failure of a child to comply with attendance requirements under title 49, chapter 6, part 30 or subdivision (g)(9); and

(3) "Satisfactory academic progress" means the child advances to the next grade, in accordance with state board of education requirements.

(iii)

(a) If the temporary assistance payment to a parent or caretaker is reduced due to the child's failure to maintain satisfactory academic progress pursuant to subdivision (h)(2)(C)(ii), the reduction shall be restored only to the parent or caretaker's subsequent temporary assistance payments upon the parent or caretaker providing documentary evidence, in person, to the department that the parent or caretaker has:

(1) Attended two (2) or more parent-teacher conferences and met with as many of the child's teachers as are in attendance at the child's parent-teacher conferences in the past year, or attended two (2) parent-teacher conferences since the child failed a course;

(2) Attended at least eight (8) hours of parenting classes since the time that the parent or caretaker received the first temporary assistance payment to which the reduction applied;

(3) Enrolled the child in and the child has attended an available and affordable tutoring program for each grade level or subject area that prevented the child from advancing to the next grade or from graduating. The child's completion of the tutoring program must be certified by the entity or individual providing the tutoring using criteria and documentation approved by the department. To meet the requirements of this subdivision

(h)(2)(C)(iii)(a)(3), the child shall attend a minimum of eight (8) hours of tutoring per semester; or

(4) Enrolled the child in summer school in order that the child may obtain a passing grade in the failed subject or subjects that prevented the child from advancing to the next grade or from graduating. If the child receives a passing grade or grades in the summer school course or courses that permits the child to advance to the next grade or graduate, then the student shall have achieved satisfactory academic progress under subdivision (h)(2)(C)(ii).

(b) In the case of a home schooled student, the parent or caretaker shall only be eligible for restoration of a reduction based on the home schooled student's failure to maintain satisfactory academic progress by presenting documentary evidence, in person, to the department that the parent or caretaker has met the requirements for restoration under subdivisions (h)(2)(C)(iii)(a)(2) or (h)(2)(C)(iii)(a)(3).

(c) The department shall define by rule what documentary evidence shall be accepted for purposes of restoring a reduction in temporary assistance payment payments.

(d) All documentation relevant to establishing academic progress or restoring benefits shall be provided upon re-certification of the parent or caretaker relative's temporary assistance case.

(e) To the extent permitted by federal law, any moneys remaining as a result of reductions in temporary assistance payments based on a child's failure to maintain satisfactory academic progress shall be expended for purposes consistent with § 71-1-113, and shall not revert to the general fund at the end of the fiscal year.

(iv) Failure to comply with the personal responsibility plan as required under subdivision (h)(2)(B)(ii), without good cause, shall result in the parent or caretaker relative receiving a child only grant until such time as compliance occurs.

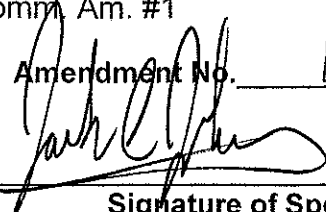
SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2013, the public welfare requiring it.



SA0311

Amendment No. 1

  
Signature of Sponsor

<b>FILED</b>
Date <u>3/28/13</u>
Time <u>2:30</u>
Clerk <u>ARB</u>
Comm. Amdt. <u>1</u>

**AMEND Senate Bill No. 145\***

**House Bill No. 139**

by deleting all language after the enacting clause and by substituting instead the following:

**SECTION 1.** Tennessee Code Annotated, Sections 56-1-402 and 56-1-403, are amended by deleting the sections in their entirety.

**SECTION 2.** Tennessee Code Annotated, Section 56-1-415, is amended by deleting the language "§§ 56-1-402 -- 56-1-405" and substituting instead the language "part 9 of this chapter".

**SECTION 3.** Tennessee Code Annotated, Title 56, Chapter 1, is amended by adding the following language as a new part:

**56-1-901. Title and Definitions.**

- (a) This part shall be known and may be cited as the "Standard Valuation Law".
- (b) For purposes of this part, the following definitions shall apply on or after the operative date of the valuation manual:

(1) "Accident and health insurance contracts" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness or medical conditions and as may be specified in the valuation manual;

(2) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in § 56-1-903;

(3) "Company" means an entity that:



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(A) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one (1) such policy in force or on claim; or

(B) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance or deposit-type contracts in this state;

(4) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks, and as may be specified in the valuation manual;

(5) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(6) "NAIC" means the National Association of Insurance Commissioners;

(7) "Policyholder behavior" means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this part including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) "Principle-based valuation" means a reserve valuation that uses one (1) or more methods or one (1) or more assumptions determined by the insurer and is required to comply with § 56-1-915 as specified in the valuation manual;

(9) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American

Academy of Actuaries' qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual;

(10) The term "tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude; and

(11) The term "valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this part or as subsequently amended.

**56-1-902. Reserve Valuation.**

(a) For policies and contracts issued prior to the operative date of the valuation manual:

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after January 1, 1962, and prior to the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when the valuation complies with the minimum standard provided in this part.

(2) Sections 56-1-904 through 56-1-913 of this part shall apply to all policies and contracts, as appropriate, subject to this part issued on or after January 1, 1962 and prior to the operative date of the valuation manual and the provisions set forth in 56-1-914 through 56-1-915 of this part shall not apply to any such policies and contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1962 shall be that provided by the laws in effect immediately prior to that date.

(b) For policies and contracts issued on or after the operative date of the valuation manual:

(1) The commissioner shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this part; and

(2) Sections 56-1-914 through 56-1-915 shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

**56-1-903. Actuarial Opinion of Reserves.**

(a) For an actuarial opinion prior to the operative date of the valuation manual:

(1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2) For actuarial analysis of reserves and assets supporting reserves:

(A) Every life insurance company, except as exempted by regulation, shall also annually include in the opinion required by subdivision (a)(1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under, and expenses associated with, the policies and contracts.

(B) The commissioner may provide by regulation for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) Each opinion required by subdivision (a)(2) shall be governed by the following provisions:

(A) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by regulations promulgated by the commissioner or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the

company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(4) Every opinion required by this subsection (a) shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995;

(B) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation;

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner prescribes by regulation;

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(E) For purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulation;

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion; .

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations promulgated by the commissioner;

(H) Except as provided in subdivisions (a)(4)(L)-(N), documents, materials or other information in the possession or control of the department that are a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to 10-7-501 or 56-1-602, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties;

(I) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (a)(4)(H);

(J) In order to assist in the performance of the commissioner's duties, the commissioner may:

(i) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (a)(4)(H) with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities; provided, the recipient

agrees to maintain the confidentiality and privileged status of the document, material or other information;

(ii) Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(iii) Enter into agreements governing sharing and use of information consistent with subdivisions (a)(4)(H) to (J),

(K) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under § 56-1-903 or as a result of sharing as authorized in subdivision (a)(4)(J);

(L) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by regulation;

(M) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional

disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material; and

(N) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(b) For an actuarial opinion of reserves after the operative date of the valuation manual:

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope;

(2) For actuarial analysis of reserves and assets supporting reserves, every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subdivision (b)(1), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company



with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under, and expenses associated with, the policies and contracts.

(3) Each opinion required by subdivision (b)(2) shall be governed by the following provisions:

(A) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion; and

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(4) Every opinion shall be governed by the following provisions:

(A) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner;

(B) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual;

(C) The opinion shall apply to all policies and contracts subject to this subsection (b), plus other actuarial liabilities as may be specified in the valuation manual,

(D) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual;

(E) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(F) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion; and

(G) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in regulations promulgated by the commissioner.

#### **56-1-904. Computation of Minimum Standard.**

Except as provided in §§ 56-1-905, 56-1-906 and 56-1-913, the minimum standard for the valuation of policies and contracts issued prior to January 1, 1962 shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in §§ 56-1-905, 56-1-906 and 56-1-913, the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1962, shall be the commissioner's reserve valuation methods defined in §§ 56-1-907, 56-1-908, 56-1-911 and 56-1-913, three and one half percent (3.5%) interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or

after May 6, 1973, four percent (4%) interest for policies issued prior to March 13, 1978, five and one half percent (5.5%) interest for single premium life insurance policies and four and one half percent (4.5%) interest for all other policies issued on or after March 13, 1978, and the following tables:

(1) For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies: the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of § 56-7-401(f), the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of § 56-7-401(f) and prior to the operative date of § 56-7-401(h), provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this part may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for policies issued on or after the operative date of § 56-7-401(h):

(A) The Commissioners 1980 Standard Ordinary Mortality Table;

(B) At the election of the company for any one (1) or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(C) Any ordinary mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(2) For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of § 56-7-401(g), and for policies issued on or after the operative date of § 56-7-401(g), the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC that is approved by

regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the policies;

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate or any modification of either of these tables approved by the commissioner;

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the NAIC, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: the 1959 Accidental Death Benefits Table or any

accidental death benefits table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies, for policies issued on or after January 1, 1961 and prior to January 1, 1966, either that table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the commissioner.

**56-1-905. Computation of Minimum Standard for Annuities.**

(a) Except as provided in § 56-1-906, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this section and for annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in §§ 56-1-907 and 56-1-908 and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to March 13, 1978, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after March 13, 1978, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by

regulation promulgated by the commissioner for use in determining the minimum standard of valuation for these contracts, or any modification of these tables approved by the commissioner, and seven and one half percent (7.5%) interest;

(3) For individual annuity and pure endowment contracts issued on or after March 13, 1978, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the commissioner, and five and one half percent (5.5%) interest for single premium deferred annuity and pure endowment contracts and four and one half percent (4.5%) interest for all other individual annuity and pure endowment contracts;

(4) For annuities and pure endowments purchased prior to March 13, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and six percent (6%) interest; and

(5) For annuities and pure endowments purchased on or after March 13, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one half percent (7.5%) interest.

(b) After May 6, 1973, any company may file with the commissioner a written notice of its election to comply with this section after a specified date before January 1, 1979, which shall be the operative date of this section for that company. If a company makes no election, the operative date of this section for that company shall be January 1, 1979.

**56-1-906. Computation of Minimum Standard by Calendar Year of Issue.**

(a) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(1) Life insurance policies issued in a particular calendar year, on or after the operative date of § 56-7-401(h);

(2) Individual annuity and pure endowment contracts issued in a particular calendar year, on or after January 1, 1983;

(3) Annuities and pure endowments purchased in a particular calendar year, on or after January 1, 1983, under group annuity and pure endowment contracts; and

(4) The net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts.

(b) For calendar year statutory valuation interest rates:

(1) The calendar year statutory valuation interest rates,  $I$ , shall be determined as follows and the results rounded to the nearer one-quarter of one percent (0.25%), where  $R_1$  is the lesser of  $R$  and .09,  $R_2$  is the greater of  $R$  and .09,  $R$  is the reference interest rate defined in this section, and  $W$  is the weighting factor defined in this section:

(A) For life insurance:

$$I = .03 + W \cdot (R_1 - .03) + \frac{W}{2} \cdot (R_2 - .09)$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W \cdot (R - .03)$$

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision (b)(1)(B), the formula for life insurance in subdivision (b)(1)(A) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less.

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply.

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply.

(2)

(A) However, if the calendar year statutory valuation interest rate for a life insurance policy issued in any calendar year determined without reference to this subdivision (b)(2)(A) differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent (0.5%), the calendar



year statutory valuation interest rate for the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year.

(B) For purposes of applying subdivision (b)(2)(A), the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when § 56-7-401(h) becomes operative.

(c) The weighting factors referred to in the formulas described in subsection (b) are given in the following tables:

(1)

(A) Weighting factors for life insurance:

Guarantee	
Duration	Weighting
(Years)	Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

(B) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(2) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(3) Weighting factors for other annuities and for guaranteed interest contracts, except as provided in subdivision (c)(2), shall be as specified in subdivisions (c)(3)(A), (B) and (C), according to the rules and definitions in subdivisions (c)(3)(D), (E) and (F):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors in subdivision (c)(3)(A) increased by:

Plan Type		
A	B	C
.15	.25	.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, that do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors in subdivision (c)(3)(A) or derived in subdivision (c)(3)(B) increased by:

Plan Type

A	B	C
.05	.05	.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in subdivisions (c)(3)(A)-(C) is defined as follows:

(i) Plan Type A: At any time policyholder may withdraw funds only:

(a) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(b) Without an adjustment but installments over five (5) years or more;

(c) As an immediate life annuity; or

(d) No withdrawal permitted.

(ii) Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only:

(a) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(b) Without an adjustment but in installments over five (5) years or more;

(c) No withdrawal permitted; or

(d) At the end of interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than five years.

(iii) Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either:

(a) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(b) Subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or

guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) The reference interest rate referred to in subsection (b) means:

(1) For life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (d)(2), with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (d)(2), with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite

yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.; or

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision (d)(2), the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(e) For alternative method for determining reference interest rates, in the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc. or in the event that the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the NAIC and approved by regulations promulgated by the commissioner may be substituted.

**56-1-907. Reserve Valuation Method—Life Insurance and Endowment Benefits.**

(a) Except as otherwise provided in §§ 56-1-908, 56-1-911 and 56-1-913, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for

by those policies, over the then present value of any future modified net premiums therefore. The modified net premiums for a policy shall be the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (a)(1) over subdivision (a)(2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of the policy;

(2) A net one (1) year term premium for the benefits provided for in the first policy year.

(b) For a life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined in this part as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium shall, except as otherwise provided in § 56-1-911, be the greater of the reserve as of the policy anniversary calculated as described in subsection (a) and the reserve as of the policy anniversary calculated as described in subsection (a), but with:

(1) The value defined in subdivision (a)(1) being reduced by fifteen percent (15%) of the amount of such excess first year premium;

(2) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(3) The policy being assumed to mature on that date as an endowment; and

(4) The cash surrender value provided on that date being considered as an endowment benefit.

(c) In making the comparison the mortality and interest bases in §§ 56-1-904 and 56-1-906 shall be used.

(d) Reserves according to the commissioner's reserve valuation method shall be calculated by a method consistent with subsections (a) and (b) for:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, codified in 26 U.S.C. § 408, as amended;

(3) Disability and accidental death benefits in all policies and contracts; and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

**56-1-908. Reserve Valuation Method—Annuity and Pure Endowment Benefits.**



(a) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, codified in 26 U.S.C. § 408, as amended.

(b) Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

**56-1-909. Minimum Reserves.**

(a) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after March 13, 1978, be less than the aggregate reserves calculated in accordance with the methods set forth in §§ 56-1-907, 56-1-908, 56-1-911 and 56-1-912 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(b) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by § 56-1-903.

**56-1-910. Optional Reserve Calculation.**

(a) Reserves for policies and contracts issued prior to March 13, 1978, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to March 13, 1978.

(b) Reserves for any category of policies, contracts or benefits established by the commissioner, issued on or after March 13, 1978, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this part, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

(c) A company, which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this part may adopt a lower standard of valuation with the approval of the commissioner, but not lower than the minimum provided herein; provided that, for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by § 56-1-903 shall not be deemed to be the adoption of a higher standard of valuation.

**56-1-911. Reserve Calculation—Valuation Net Premium Exceeding the Gross Premium Charged.**

(a) If in any contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract

calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for the policy or contract; or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 56-1-904 and 56-1-906.

(b) For a life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value, or a combination, in an amount greater than the excess premium, § 56-1-911(a) shall be applied as if the method actually used in calculating the reserve for the policy were the method described in § 56-1-907, without consideration of § 56-1-907(b). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with § 56-1-907, including 56-1-907(b), and the minimum reserve calculated in accordance with this section.

**56-1-912. Reserve Calculation—Indeterminate Premium Plans.**

In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the

methods described in §§ 56-1-907, 56-1-908 and 56-1-911, the reserves that are held under the plan shall, as determined by regulations promulgated by the commissioner:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method that is consistent with the principles of this part.

**56-1-913. Minimum Standard for Accident and Health Insurance Contracts.**

(a) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under § 56-1-902(b).

(b) For disability, accident and sickness, accident and health insurance contracts issued on or after January 1, 1962, and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by regulation.

**56-1-914. Valuation Manual for Policies Issued On or After the Operative Date of the Valuation Manual.**

(a) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under § 56-1-902(b), except as provided under subsections (e) or (g).

(b) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths ( $\frac{3}{4}$ ) of the members voting, whichever is greater.

(2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent (75%) of the direct

premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

(3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two (42) of the following fifty-five (55) jurisdictions: The fifty (50) states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam and Puerto Rico.

(c) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(1) At least three-fourths ( $\frac{3}{4}$ ) of the members of the NAIC voting, but not less than a majority of the total membership, and

(2) Members of the NAIC representing jurisdictions totaling greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subdivision (c)(1): life, accident and health annual statements, health annual statements or fraternal annual statements.

(d) The valuation manual shall specify all of the following:

(1) Minimum valuation standards for and definitions of the policies or contracts subject to § 56-1-902(b). Such minimum valuation standards shall be:

(A) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to § 56-1-902(b);

(B) The commissioner's annuity reserve valuation method for annuity contracts subject to § 56-1-902(b); and

(C) Minimum reserves for all other policies or contracts subject to § 56-1-902(b).

(2) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in § 56-1-915(a) and the minimum valuation standards consistent with those requirements;

(3) For policies and contracts subject to a principle-based valuation under § 56-1-915:

(A) Requirements for the format of reports to the commissioner under § 56-1-915(b)(2) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this part;

(B) Assumptions shall be prescribed for risks over which the company does not have significant control or influence.

(C) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.

(4) For policies not subject to a principle-based valuation under § 56-1-915, the minimum valuation standard shall either:

(A) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(B) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(5) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement,

disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(6) The data and form of the data required under § 56-1-916, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(e) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this part, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by regulation.

(f) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this part. The commissioner may rely upon the opinion, regarding provisions contained within this part, of a qualified actuary engaged by the commissioner of another state, district or territory of the United States. As used in this subsection (f), "engage" includes employment and contracting.

(g) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this part; and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to § 56-2-305 and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**56-1-915. Requirements of a Principle-Based Valuation.**

(a) A company shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(1) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(2) Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(3) Incorporate assumptions that are derived in one (1) of the following manners:

(A) The assumption is prescribed in the valuation manual.

(B) For assumptions that are not prescribed, the assumptions

shall:

(i) Be established utilizing the company's available experience to the extent it is relevant and statistically credible; or

(ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(4) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(b) A company using a principle-based valuation for one (1) or more policies or contracts subject to this section as specified in the valuation manual shall:



(1) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(2) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(3) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(c) A principle-based valuation may include a prescribed formulaic reserve component.

**56-1-916. Experience Reporting for Policies In Force On or After the Operative Date of the Valuation Manual.**

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

**56-1-917. Confidentiality.**

(a) For purposes of this Section, "Confidential Information" shall mean:

(1) A memorandum in support of an opinion submitted under § 56-1-903 and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(2) All documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under § 56-1-914(f); provided, however, that if an examination report or other material prepared in connection with an examination made under § 56-1-411 is not held as private and confidential information under § 56-1-411, an examination report or other material prepared in connection with an examination made under § 56-1-914(f) shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under § 56-1-411;

(3) Any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under § 56-1-915(b)(2) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials and other information;

(4) Any principle-based valuation report developed under § 56-1-915(b)(3) and any other documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(5) Any documents, materials, data and other information submitted by a company under § 56-1-916, collectively, "experience data," and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such

experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any "experience data", the "experience materials") and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

(b) For privilege for, and confidentiality of, confidential Information:

(1) Except as provided in this Section, a company's confidential information is confidential by law and privileged, and shall not be subject to § 10-7-503 or § 56-1-602, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(2) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information:

(A) With other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries;

(B) In the case of Confidential Information specified in subdivisions (a)(1) and (a)(4) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional

disciplinary proceedings and with state, federal and international law enforcement officials; and

(C) Provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the commissioner.

(4) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(5) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection (b).

(6) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (b)(3).

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (b) shall be available and enforced in any proceeding in, and in any court of, this state.

(8) In this section, "regulatory agency," "law enforcement agency" and "NAIC" include, but are not limited to, their employees, agents, consultants and contractors.

(c) Notwithstanding subsection (b), any confidential information specified in subdivisions (a)(1) and (a)(4):

(1) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under § 56-1-903 or principle-based valuation report developed under § 56-1-915(b)(3) by reason of an action required pursuant to this part or by regulations promulgated by the commissioner;

(2) May otherwise be released by the commissioner with the written consent of the company; and

(3) Once any portion of a memorandum in support of an opinion submitted under § 56-1-903 or a principle-based valuation report developed under § 56-1-915(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

**56-1-918. Single State Exemption.**

(a) The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from § 56-1-914 provided:

(1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by regulation.

(b) For any company granted an exemption under this section, §§ 56-1-903 through 913 shall be applicable. With respect to any company applying this exemption, any reference to § 56-1-914 found in §§ 56-1-903 through 913 shall not be applicable.

**56-1-919. Effective Date.**

To the extent that this part conflicts with or is inconsistent with any law, the provisions of this part shall control. This part shall apply to policies and contracts issued on or after January 1, 1962.

**SECTION 4.** Tennessee Code Annotated, Section 56-7-401(h)(8)(B)(vi), is amended by deleting the subdivision and substituting instead the following:

(vi) For policies issued prior to the operative date of the valuation manual, any Commissioners' Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the commissioner approves by regulation any Commissioners' Standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

**SECTION 5.** Tennessee Code Annotated, Section 56-7-401(h)(8)(B)(vii), is amended by deleting the subdivision and substituting instead the following:

(vii) For policies issued prior to the operative date of the valuation manual, any Commissioners' Standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the commissioner approves by regulation any Commissioners' Standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

**SECTION 6.** Tennessee Code Annotated, Section 56-7-401(h)(9), is amended by deleting the subdivision and substituting instead the following:

(9)

(A) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent (0.25%).

(B) For policies issued on or after the operative date of the valuation manual the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

**SECTION 7.** Tennessee Code Annotated, Section 56-7-401, is further amended by adding the following language as a new subsection:

(o) "Operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual is effective as defined in § 56-1-914;

**SECTION 8.** This act shall become effective July 1, 2013, the public welfare requiring it.





SA0318

Amendment No. 1

Signature of Sponsor

FILED
Date <u>3/28/13</u>
Time <u>2:30</u>
Clerk <u>ARB</u>
Comm. Amdt. <u>1</u>

**AMEND Senate Bill No. 224\*****House Bill No. 443**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 22, is amended by adding the following language as a new part:

**47-22-301.** As used in this part:

(1) "Account purchase transaction" means an agreement under which a commercial entity sells accounts, instruments, documents, or chattel paper to another commercial entity subject to a discount or fee, regardless of whether the commercial entity has a repurchase obligation related to the transaction;

(2) "Acquired" means the obtaining of business records, a credit card account, or an instrument evidencing an outstanding debt through an ownership transfer, including a contractual agreement, an account purchase transaction or assignment in a creditor's regularly conducted business;

(3) "Cardholder" means any person who has agreed with a card issuer to pay debts arising from card transactions, whether the card used in such transactions has been issued to the cardholder or to another person;

(4) "Credit card account" means any account that can be accessed by a credit card, including a debit card with a credit feature, whereby the cardholder may obtain loans from time to time either by credit card cash advance or by the purchase or satisfactions by the bank of obligations of the cardholder incurred pursuant to a credit card;



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(5) "Creditor" means the person, business, financial institution or commercial entity that currently owns a credit card account or an instrument evidencing outstanding debt;

(6) "Custodian" means and includes an individual, agent, employee, representative, or officer of a creditor, or an individual, agent, employee, representative, or officer of a management company charged with keeping a creditor's records, or any individual familiar with the books and records of a creditor or an appropriately designated person who is an official custodian of records;

(7) "Electronic records" means that information evidenced by a record or records consisting of information stored electronically which may be produced tangibly;

(8) "Financial institution" means:

(A) A banking institution that is authorized to issue credit cards pursuant to federal or state law;

(B) A banking subsidiary owned by a bank holding company as defined in 12 U.S.C. § 1841, or by a savings and loan holding company as defined in 12 U.S.C. § 1467a(a)(1)(D); or

(C) Any other federally regulated banking institution;

(9) "Incorporated" means to integrate into records, to make a part of records, to place within records, or to treat as records;

(10) "Issuer" means a person, business, financial institution, commercial entity or authorized agent of a financial institution that currently issues a credit card account or an instrument evidencing outstanding debt;

(11) "Original creditor" means the person, business, financial institution or commercial entity that had the original contractual agreement with a cardholder on a credit card account or an instrument evidencing outstanding debt;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity; and

(13) "Succeeding creditor" means any creditor, not the originating creditor, succeeding to an ownership interest in a credit card account or an instrument evidencing outstanding debt by bill of sale or assignment.

**47-22-302.**

(a) A creditor's records shall include, but are not limited to, written or electronic records of an original creditor, issuer, or succeeding creditor that have been acquired by the creditor through a contractual agreement, an account purchase transaction or assignment in the creditor's regularly conducted business and such records are:

(1) Incorporated as a business duty into the records of the creditor's regularly maintained records; and

(2) Relied upon in the creditor's regularly conducted business activity.

(b)

(1) Except as provided in subdivision (b)(2), records described in subsection (a) shall be considered records of the creditor and the creditor's records custodian may testify with respect to such records as if they are records of the creditor.

(2) The provisions of subdivision (b)(1) shall not apply if the source of information or the method or circumstances of preparation indicate the records described in subsection (a) lack trustworthiness.

(c) The records described in this section may be submitted as records of regularly conducted activity pursuant to Rule 803(6) of the Tennessee Rules of Evidence.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

Amendment No. 1



SA0272

*Crowe*

Signature of Sponsor

FILED
Date <u>3-27-13</u>
Time <u>5:15 PM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 257\***

**House Bill No. 1019**

in subdivision (a)(7)(B) in the amendatory language of Section 1 of the bill as introduced by inserting the language "physician assistant," between "physician," and "nurse".

AND FURTHER AMEND by inserting the following as a new subdivision (a)(7) in the amendatory language of Section 1 of the bill as introduced and renumbering the subsequent subdivisions:

(7) "Physician assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19;

AND FURTHER AMEND in subsection (c) of the amendatory language of Section 1 by deleting the language " a nurse practitioner or clinical nurse specialist for a patient with whom such nurse practitioner or clinical nurse specialist has a bona fide nurse-patient relationship" and by substituting instead the language " a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship".

AND FURTHER AMEND in subsection (c)(2) of the amendatory language of Section 1 by inserting the language "physician assistant's," between the words "the" and "nurse".

AND FURTHER AMEND in subdivision (c)(3)(A) of the amendatory language of Section 1 by inserting the following language immediately after the language "title 33" and before the punctuation ",":



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and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued

AND FURTHER AMEND in subdivision (c)(4)(C) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "in the" and "nurse practitioner" and insert the language "physician assistant or" between the language "and the" and "nurse determines".

AND FURTHER AMEND in the third sentence of subsection (d) of the amendatory language of Section 1 by inserting the language "or physician assistant" between the language "physician" and "or".

AND FURTHER AMEND in subdivision (j)(2)(C) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "physicians," and "nurse".

AND FURTHER AMEND in subdivision (j)(3) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "physician," and "nurse".

AND FURTHER AMEND by deleting Sections 2 and 3 of the bill as introduced and by appropriately redesignating the subsequent section.

Amendment No. 1



SA0272

*Crow*

Signature of Sponsor

FILED
Date <u>3-27-13</u>
Time <u>5:15 PM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 257\***

**House Bill No. 1019**

in subdivision (a)(7)(B) in the amendatory language of Section 1 of the bill as introduced by inserting the language "physician assistant," between "physician," and "nurse".

AND FURTHER AMEND by inserting the following as a new subdivision (a)(7) in the amendatory language of Section 1 of the bill as introduced and renumbering the subsequent subdivisions:

(7) "Physician assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19;

AND FURTHER AMEND in subsection (c) of the amendatory language of Section 1 by deleting the language " a nurse practitioner or clinical nurse specialist for a patient with whom such nurse practitioner or clinical nurse specialist has a bona fide nurse-patient relationship" and by substituting instead the language " a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship".

AND FURTHER AMEND in subsection (c)(2) of the amendatory language of Section 1 by inserting the language "physician assistant's," between the words "the" and "nurse".

AND FURTHER AMEND in subdivision (c)(3)(A) of the amendatory language of Section 1 by inserting the following language immediately after the language "title 33" and before the punctuation ",":



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and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued

AND FURTHER AMEND in subdivision (c)(4)(C) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "in the" and "nurse practitioner" and insert the language "physician assistant or" between the language "and the" and "nurse determines".

AND FURTHER AMEND in the third sentence of subsection (d) of the amendatory language of Section 1 by inserting the language "or physician assistant" between the language "physician" and "or".

AND FURTHER AMEND in subdivision (j)(2)(C) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "physicians," and "nurse".

AND FURTHER AMEND in subdivision (j)(3) of the amendatory language of Section 1 by inserting the language "physician assistant," between the language "physician," and "nurse".

AND FURTHER AMEND by deleting Sections 2 and 3 of the bill as introduced and by appropriately redesignating the subsequent section.



SA0198

Amendment No. 1

*Kebe*  
Signature of Sponsor

FILED
Date <u>3-21-13</u>
Time <u>9:30 AM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 473\***

**House Bill No. 401**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 2, is amended by adding the following as a new part:

36-2-401. This chapter provides a single means to establish parentage of children born of donated embryo transfer to recipient intended parent. It is intended to promote the interests of children who may be born as a result of donated embryo transfer. It is the intent that no adoption pursuant to chapter 1 of this title or no parentage pursuant to chapter 3 of this title shall be required to create parentage in recipient intended parent pursuant to this part.

36-2-402. As used in this part:

(1) "Embryo" or "human embryo" means an individual fertilized ovum of the human species from the single-cell stage to eight-week development;

(2) "Embryo parentage" means the acceptance of rights and responsibilities for an embryo by a recipient intended parent;

(3) "Embryo relinquishment" or "legal transfer of rights to an embryo" means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an embryo;

(4) "Embryo transfer" means the medical procedure of physically placing an embryo into the uterus of a female recipient intended parent;



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(5) "Legal embryo custodian" means the person or entity, including an embryo transfer clinic, who hold the legal rights and responsibilities for a human embryo and who relinquishes said embryo to another person; and

(6) "Recipient intended parent" means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

36-2-403.

(a)

(1) A legal embryo custodian may relinquish all rights and responsibilities for an embryo prior to embryo transfer. A written contract shall be entered into as appropriate when establishing embryo parentage prior to embryo transfer for the legal transfer of rights to an embryo and to any child that may result from the embryo transfer:

(A) Between legal embryo custodians and the embryo transfer clinic; or

(B) Between a legal embryo custodian and each recipient intended parent.

(2) The contract shall be signed, as appropriate, by each legal embryo custodian for such embryo, by the embryo transfer clinic or by each recipient intended parent in the presence of a notary public. Initials or other designations may be used if the individuals desire anonymity.

(b) If the embryo was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with

in vitro fertilization shall not be entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment be required.

(c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection (a), the legal transfer of rights to an embryo shall be considered complete at the time of thawing or to such other time as the parties may agree, and the embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) shall be presumed to be the legal child of the recipient intended parent; provided, that each legal embryo custodian and each recipient intended parent has entered into a written contract pursuant to this part.

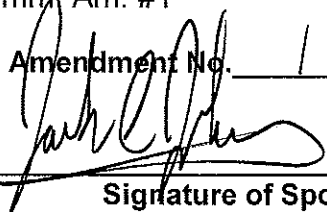
(e) Any and all prior legal embryo custodians whose donation of an embryo has resulted in the birth of a child to a recipient intended parent pursuant to subsection (a) shall have no rights or responsibilities with such child and of the child to them.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.



SA0303

Amendment No. 1

  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3/28/13</u>
Time	<u>2:30</u>
Clerk	<u>ARB</u>
Comm. Amdt.	<u>1</u>

**AMEND Senate Bill No. 491\***

**House Bill No. 412**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-4-125, is amended by adding the following language as a new subsection:

(e) A manicurist may provide manicuring services to an ill, disabled or homebound individual, or to such individual's caregiver, custodian or guardian, in the individual's residence.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



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SA0275

Amendment No. 1

Signature of Sponsor

<b>FILED</b>	
Date	<u>3-27-13</u>
Time	<u>5:15 PM</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 582**

**House Bill No. 317\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 63-10-204(4), is amended by adding the following new language as new subdivisions:

(D) For use in a licensed prescribing practitioner's office for administration to the prescribing practitioner's patient or patients when the product is not commercially available upon receipt of an order from the prescriber;

(E) For use in a health care facility for administration to a patient or patients receiving treatment or services provided by that facility when the product is not commercially available upon receipt of an order from an authorized licensed medical practitioner of the facility; or

(F) For use by emergency medical services for administration to a patient or patients receiving services from them under authorized medical control when the product is not commercially available upon receipt of an order from a licensed prescriber authorized to provide medical control.

SECTION 2. Tennessee Code Annotated, Section 63-10-204(12), is amended by inserting the following new language following the words "to a patient or the patient's agent" and before "by or pursuant to the lawful order of a prescriber":

, to include a licensed healthcare practitioner or a health care facility providing services or treatment to the patient or patients,

SECTION 3. Tennessee Code Annotated, Title 63, Chapter 10, Part 2, is amended by adding the following as a new section:



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63-10-216.

(a) Prior to initial licensure in this state as a compounding pharmacy, a pharmacy located outside of this state must have an inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located. Out-of-state pharmacy practice sites must provide a copy of the most recent inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located, which must have been within the previous twelve (12) months. Prior to renewal of its license in this state, an out-of-state pharmacy practice site must provide the most recent inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located or equivalent regulatory entity, and which must have been within the previous twelve (12) months. The board of pharmacy shall have the right to require additional information before issuing or renewing a pharmacy license to insure compliance with applicable laws of this state and any rules, and policies of the board.

(b) Any compounding pharmacy having an active Tennessee license shall notify the board within fourteen (14) business days of receipt of any order or decision by a regulatory agency, other than the Tennessee board of pharmacy, imposing any disciplinary action, including any warning, on the pharmacy.

(c) Any pharmacies engaged in sterile compounding must comply with relevant United States Pharmacopeia (USP) guidelines as adopted by the board by rule or policy.

(d) Any pharmacies engaging in sterile compounding shall report, on a quarterly basis, to the board the quantity of sterile compounded products dispensed in a defined time period, in accordance with rules or policies adopted by the board.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

Amendment **1** to Amendment 1



SA0347

Amendment No. **1 to 1**

*Furill Aule*

Signature of Sponsor

FILED	
Date	<b>4.3.13</b>
Time	<b>9:45 am</b>
Clerk	<b>JP</b>
Comm. Amdt.	_____

**AMEND Senate Bill No. 582**

**House Bill No. 317\***

by deleting the word "or" at the end of subdivision (E) of the amendatory language of Section 1;  
by deleting the period at the end of subdivision (F) of the amendatory language of Section 1 and  
substituting instead a semi-colon and the word "or"; and by adding the following language as a  
new subdivision to be designated as follows:

(G) For use by a licensed veterinarian for administration to their non-human  
patient or patients or for dispensing to non-human patients in the course of the practice  
of veterinary medicine upon receipt of an order from a veterinarian when the product is  
not commercially available.



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SA0276

Amendment No. 2

Signature of Sponsor

<b>FILED</b>	
Date	<u>3.27.13</u>
Time	<u>5:15 PM</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 582**

**House Bill No. 317\***

by deleting subsection (d) in Section 3 in its entirety and by substituting instead the following:

(d) Any pharmacies engaging in sterile compounding, except hospital pharmacies compounding for inpatients of a hospital, shall report on a quarterly basis to the Board the quantity of sterile compounded products dispensed in a defined time period in accordance with policies adopted by the board; provided, however, the executive director of the board may request this information from a hospital pharmacy for cause and the hospital pharmacy shall be required to respond in a timely manner as defined by the executive director of the board.



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Amendment No. 1

Signature of Sponsor

<b>FILED</b>
Date <u>3/28/13</u>
Time <u>2:30</u>
Clerk <u>ARB</u>
Comm. Amdt. <u>1</u>

**AMEND Senate Bill No. 693\***

**House Bill No. 1065**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-11-104(a)(2), is amended by deleting the language "in Tennessee".

SECTION 2. Tennessee Code Annotated, Section 62-11-104, is further amended by adding the following language as a new subsection:

( ) On or after July 1, 2013, any partnership, association, company or corporation seeking initial licensure pursuant to this chapter shall be placed on a probationary licensure status pursuant to a probation period, the requirements of which shall be determined by the commissioner.

SECTION 3. Tennessee Code Annotated, Section 62-11-111(a), is amended by adding the following language as a new subdivision:

( ) Proof of a permanent, fixed business address as determined appropriate by the department;

SECTION 4. Tennessee Code Annotated, Section 62-11-112, is amended by adding the following language as a new subsection:

(i)

(1) An individual holding a valid certificate of registration as an apprentice pursuant to this section for at least two (2) years shall be eligible to take any examination required by the commissioner for initial licensure.



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(2) An individual holding a valid certificate of registration as an apprentice pursuant to this section for at least four (4) years shall be exempt from taking any qualifying education as required by the commissioner prior to initial licensure.

SECTION 5. This act shall take effect July 1, 2013, the public welfare requiring it.



SA0279

Amendment No. 1

C. Crow  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3.27.13</u>
Time	<u>5:15 PM</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 705\***

**House Bill No. 868**

By adding the following language to the end of Section 63-1-313(a) in SECTION 1 of the bill:

;provided, however, this subsection shall not prohibit a medical doctor, osteopathic physician, advanced practice nurse with certificates of fitness to prescribe, or physician assistant working at a pain management clinic from providing to that practitioner's patient, without charge, a sample of a schedule IV or schedule V controlled substance in a quantity limited to an amount that is adequate to treat the patient for a maximum of seventy-two (72) hours.



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SA0319

Amendment No. 1

  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3/28/13</u>
Time	<u>2:30</u>
Clerk	<u>ARB</u>
Comm. Amdt.	<u>1</u>

**AMEND Senate Bill No. 713\***

**House Bill No. 873**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 35-6-601, is amended by deleting the section in its entirety and by substituting instead the following:

Section 35-15-1101 controls all application and construction of chapter 6.

SECTION 2. Tennessee Code Annotated, Section 35-14-102 is amended by deleting subdivisions (1) and (3) and by substituting instead the following:

(1) "Governing instrument" means:

(A) A will, deed, trust instrument or agency agreement;

(B) For purposes of subdivision (1)(A), an agency agreement, includes but is not limited, to any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty pursuant to chapter 15, part 12;

(3) "Trustee" means any fiduciary as defined in § 35-15-103.

SECTION 3. Tennessee Code Annotated, Section 35-15-103 is amended by deleting subdivision (3)(B) and by adding the following new subdivisions:

( ) "Alter ego of a trustee" means, that absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust; none of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee, of such trust:



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(A) Any combination of the factors listed in the definition of dominion and control over trust contained in this section;

(B) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to such trust as a trustee, when in fact the settlor was not a trustee;

(C) Making any requests for distributions on behalf of beneficiaries; or

(D) Making any requests to the trustee to hold, purchase, or sell any trust property;

( ) "Another state" or "other state" means any state other than this state;

( ) "Beneficial interest" means a distribution interest or a remainder interest; provided however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor;

( ) "Distribution beneficiary" means a beneficiary who is an eligible distributee or permissible distributee of the income or principal of a trust;

( ) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by a distribution beneficiary under a trust and may be a current distribution interest or a future distribution interest;

(B) Relative to a distribution interest:

(i) Neither the existence of a distribution interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest is relevant in the equitable division of marital property;

(ii) None of the factors in subdivision (B)(i) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest (even if that spouse is also a beneficiary of the trust creating the distribution interest)

are relevant to, indicative of or effect the transmutation or other conversion of separate property to community property;

(iii) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest relative to the operation or maintenance of property related to a distribution interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to community property;

(iv) Any funds expended pursuant to subdivision (B)(iii) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

(C) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

(a) All income shall be distributed to a named beneficiary;

or

(b) One hundred thousand dollars (\$100,000) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

(a) The trustee shall make distributions for health, education, maintenance, and support;

(b) Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subdivision defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

(a) The trustee, may, in the trustee's sole and absolute discretion make distributions for health, education, maintenance, and support;

(b) The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

(c) The trustee may make distributions for health, education, maintenance, and support;

(d) The trustee shall make distributions for health, education, maintenance, and support, however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

(e) The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

(f) A discretionary interest may also be evidenced by:

(1) Permissive distribution language such as "may make distributions";

(2) Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

(g) An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(D)

(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

(a) The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

(b) The trust shall be a support interest only to the extent of such support distribution language; and



(c) The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subdivision (D), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest;

( ) "Directed trust" means a trust where either through the terms of the trust, an agreement of the qualified beneficiaries or a court order, one or more persons is given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary;

( ) "Dominion and control over trust" means, that in the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(A) The settlor or a beneficiary serving as a trustee, cotrustee or other fiduciary as described in § 35-15-508;

(B) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, cotrustee or other fiduciary;

(C) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds any other managerial function relative to any type of entity specified in this subdivision ( ) (C), or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(D) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, cotrustee or other fiduciary;

(E) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, cotrustee or other fiduciary;

(F) A business associate is appointed as a trustee, cotrustee or other fiduciary;

(G) A beneficiary holds any power of appointment over any or all of the trust property;

(H) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(i) Held in a fiduciary or nonfiduciary capacity;

(ii) Exercisable with or without the approval of any person in a fiduciary capacity; or

(iii) Exercisable with or without the approval of any person having an interest adverse to such settlor;

(I) A trustee, cotrustee or other fiduciary has the power to loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;

(J) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(K) The trust has only one beneficiary eligible for current distributions; or

(L) The beneficiary is serving as a cotrustee or a trust advisor or trust protector under part 12, or as any other fiduciary;

( ) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust, an agreement of the qualified beneficiaries, or court order:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty, and

(B) The power or duty is granted or reserved to another person.

( ) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) Fiduciary also means a trustee as defined in § 35-14-102;

(C) For purposes of subdivision ( ) (A), an agency agreement, includes but is not limited to, any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty pursuant to part 12;

(D) For purposes of the definition of fiduciary in § 35-15-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in § 35-15-103;

( ) "Foreign" or "foreign country" means any jurisdiction, subdivision, territory or possession thereof, other than that of the United States of America or of a state;

( ) "Foreign jurisdiction" means any jurisdiction, subdivision, territory or possession thereof, other than this state;

( ) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2004, or as later amended;

( ) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor;

( ) "Reach" means with respect to a distribution interest or any power held by anyone relative to a trust, to subject such distribution interest or such power to a judgment, decree, garnishment, attachment, execution, levy, creditor's bill or other legal,

equitable, or administrative process, relief, or control of any court, tribunal, agency, or other entity that, by power of law, is provided with powers or jurisdiction similar to those described in this subdivision;

( ) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future; relative to a remainder interest:

(A) Neither the existence of a remainder interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest is relevant in the equitable division of marital property;

(B) None of the factors in subdivision ( ) (A) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest (even if that spouse is also a beneficiary of the trust creating the remainder interest) are relevant to, indicative of or effect the transmutation or other conversion of separate property to community property;

(C) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest relative to the operation or maintenance of property related to a remainder interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to community property;

(D) Any funds expended pursuant to subdivision ( ) (C) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

( ) "Reserved power" means a power held by a settlor;

( ) "This state" means the State of Tennessee;

( ) "Trust advisor" means any person described in § 35-15-1201(a); and

( ) "Trust protector" means any person described in § 35-15-1201(a).

SECTION 4. Tennessee Code Annotated, Section 35-15-105, is amended by deleting subsection (a) and by substituting instead the following:

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; provided, however, that nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that states that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

SECTION 5. Tennessee Code Annotated, Section 35-15-105, is further amended by deleting subdivision (b)(3) and by substituting instead the following:

(b)

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

SECTION 6. Tennessee Code Annotated, Section 35-15-105, is further amended by adding the following new subsection (c):

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter and chapter 16.

SECTION 7. Tennessee Code Annotated, Section 35-15-106, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-106. Common law of trusts – Principles of equity.**

(a) The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

(b) Notwithstanding the provisions of subsection (a):

(1) No provision in a trust directing or authorizing accumulation of trust income shall be invalid; and

(2) The traditional common law distinction between a discretionary trust and a support trust and the dual judicial review standards related to this distinction shall be maintained. Unless specifically provided otherwise in this chapter, courts shall not consult, rely on or give any persuasive value to the Restatement (Third) of Trusts §§ 50, 56, 58, 59 or 60, nor any of the comments under such sections or related thereto, none of which have any force or effect relative to trusts governed by the laws of this state.

SECTION 8. Tennessee Code Annotated, Section 35-15-107, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-107. Governing Law.**

(a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument, which is called a state jurisdiction provision.

(b) When a state jurisdiction provision designates that the law of this state controls:

(1) This state and its courts have jurisdiction over a trust created in a foreign jurisdiction;

(2) The validity, construction, and administration of a trust are determined by the laws of this state, including but not limited to:

(A) The capacity of the settlor;

(B) The powers, obligations, liabilities, and rights of the trustees and other fiduciaries;

(C) The appointment and removal of the trustees and other fiduciaries;

(D) The existence and extent of all powers conferred on a trustee or other fiduciary, including but not limited to, any trustee's or other fiduciary's discretionary powers, as well as the existence and extent of all powers retained by a settlor and the validity of the exercise of any such power, whether conferred on a trustee or other fiduciary or retained by a settlor;

(3)

(A) Neither a trust nor any disposition made subject to the terms of such trust is subject to the laws of any foreign country, nor are any such trust or such disposition void, voidable, liable to be set aside or defective in any manner for any reason including but not limited to:

(i) The law of any foreign country prohibits or does not recognize the concept of a trust; or

(ii) The trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to such right, claim, or interest;

(B) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(i) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(ii) No heirship rights described in subdivision (C)(i) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate title 66, chapter 3; and

(C) Subdivision (b)(3) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a trust containing a state jurisdiction provision designating that the law of this state controls such trust;

(4) No judgment or other holding of any judicial body of any foreign country, including by not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including but not limited to, estoppel, to the extent such judgment or other holding concerns a trust containing a state jurisdiction provision designating that the law of this state controls such trust or to the extent such judgment or other holding concerns property held by such trust;

(5) If, in any action brought against a trustee or other fiduciary of a trust, any judicial body of any foreign country, including but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, takes any action whereby such judicial body declines to apply the law of this state in



determining the validity, construction, or administration of a trust, or the effect of a spendthrift provision or discretionary interest of a trust, the trustee or other fiduciary, as applicable, shall immediately upon the action of the judicial body of the foreign country and without the further order of any court of this state, cease in all respects to be trustee or other fiduciary, as applicable, of the trust and a vacancy in the office of trustee or other fiduciary, as applicable, shall immediately exist:

(A) Upon the existence of such vacancy, the trustee or other fiduciary, as applicable, has no power or authority other than to convey the trust property to the successor trustee or other fiduciary who fills such vacancy as provided in subdivision (5)(B);

(B) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust; and

(C) Section 35-15-704(e) shall also apply relative to such trustee or other fiduciary, as applicable, in the same manner as that subsection does to trustees and vacancies in trusteeship in general; however, when exercising its power provided by § 35-15-704(e), the court shall consider the purposes of this subsection (b) and make any such appointments pursuant to § 35-15-704(e) in a manner designed to give full force and effect to this subsection (b) to the maximum extent allowed by the laws of this state or of the United States.

(c) In the absence of the existence of a state jurisdiction provision, the laws of the jurisdiction where the trust was executed determine the validity of the trust and the laws of descent, while the laws of the principal place of administration determine the administration of the trust.

SECTION 9. Tennessee Code Annotated, Section 35-15-108, is amended by:  
deleting subsection (a) and by substituting instead the following:

(a) Without limiting or precluding other means for establishing a sufficient connection with a jurisdiction, the terms of a trust designating that jurisdiction's laws in a state jurisdiction provision are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction;  
which such administration, includes but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction; and

(B) Wholly or partly preparing or arranging for that preparation, either on an exclusive or a nonexclusive basis, in the designated jurisdiction of an income tax return that must be filed by the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of such assets is held in the designated jurisdiction and the trust is being administered by a person defined in subdivision (a)(1). For purposes of this subdivision (a)(3), "deposited in the designated jurisdiction," includes assets being held in any of a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

SECTION 10. Tennessee Code Annotated, Section 35-15-108, is further amended by adding the following new subsection (b) and redesignating existing subsections accordingly:

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is

administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is administered in this state.

SECTION 11. Tennessee Code Annotated, Section 35-15-408, is amended by deleting subsection (b) and by substituting instead:

(b) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person or, if no person is so appointed, by a person appointed by the court. In addition, a person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

SECTION 12. Tennessee Code Annotated, Section 35-15-409, is amended by deleting subdivision (2) and by substituting instead:

(2) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person; or if no person is so appointed, by a person appointed by the court.

SECTION 13. Tennessee Code Annotated, Section 35-15-413(a), is amended by deleting the language "or wasteful" before the colon in subsection (a) and by instead substituting the language "obsolete or ineffective".

SECTION 14. Tennessee Code Annotated, Section 35-15-413, is further amended by deleting the remainder of the language following the last comma in subdivision (a)(3) and by instead substituting the words "in a manner that fulfills as nearly as possible the settlor's charitable intent and purposes."

SECTION 15. Tennessee Code Annotated, Section 35-15-501, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-501 Application of part 5; rights of beneficiary's creditor or assignee.**

This part applies to a creditor's or assignee's claims and ability to reach mandatory, support and discretionary interests regardless of whether such interests are

subject to a spendthrift provision. To the extent not otherwise prohibited by this part, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's distribution interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

SECTION 16. Tennessee Code Annotated, Section 35-15-502, is amended by deleting the current subsection (c) and by substituting instead the following subsection (c) and by adding the following new subsections:

(c) A spendthrift provision applies to all beneficial interests, including distribution interests and remainder interests.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and a creditor or assignee of the beneficiary may not reach any of, the interest, or a present, future or prospective distribution at the trust level. Similarly, no creditor or assignee of the beneficiary may force any distribution from the trust. This subsection remains applicable regardless of the beneficiary's potential right to force a distribution under § 35-15-814.

(e) Notwithstanding any other provision of this section to the contrary, regardless of whether a beneficiary has any outstanding creditor, a trustee, cotrustee or other fiduciary of a trust subject to a spendthrift provision may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee, cotrustee or other fiduciary is liable to any creditor for paying the expenses of a beneficiary under a trust subject to a spendthrift provision. This subsection remains applicable regardless of whether the beneficiary for whom such direct payment was made held a mandatory, support, discretionary or remainder interest.

SECTION 17. Tennessee Code Annotated, Section 35-15-504, is amended by deleting the entire section and by substituting instead the following:

**35-15-504 Discretionary interests – Effect thereof.**

(a) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy.

(b) Relative to a discretionary interest, whether or not a trust contains a spendthrift provision:

(1) No creditor or assignee shall force or otherwise reach a distribution with regard to a discretionary interest;

(2) No creditor or assignee shall require a trustee, cotrustee or other fiduciary to exercise the trustee's, cotrustee's or other fiduciary's discretion to make a distribution with regard to a discretionary interest;

(3) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee, cotrustee or other fiduciary of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(4) No trustee, cotrustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a discretionary interest;

(5)

(A) Regardless of whether a beneficiary holding a discretionary interest is also a trustee, cotrustee or other fiduciary, subdivisions (b)(1) through (b)(4) remain applicable if:

(i) The beneficiary-fiduciary does not have the discretion to make or participate in making distributions to himself or herself;

(ii) The beneficiary-fiduciary's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard; or

(iii) The beneficiary-fiduciary's discretion to make or participate in making distributions to himself or herself is

exercisable only with the consent of a cotrustee or another person holding an adverse interest.

(B) A creditor or assignee may compel or otherwise reach a distribution only to the extent the creditor or assignee may compel or otherwise reach a distribution if the beneficiary was not acting as a trustee, cotrustee or other fiduciary.

SECTION 18. Tennessee Code Annotated, Section 35-15-505, is amended by renumbering subdivision (a)(5) as subdivision (a)(6).

SECTION 19. Tennessee Code Annotated, Section 35-15-505, is further amended by adding a new subdivision (a)(5) as follows:

(a)

(5) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subdivision (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

SECTION 20. Tennessee Code Annotated, Section 35-15-505, is further amended by deleting from subdivision (a)(2) the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts and subdivision (a)(3) regarding an irrevocable special needs trust," and replacing it with the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts and subdivisions (a)(3) through (a)(5) regarding an irrevocable special needs trust,".

SECTION 21. Tennessee Code Annotated, Section 35-15-505, is further amended by adding the following new subsections (e),(f) and (g):

(e) For purposes of subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise that power of withdrawal or letting that power of withdrawal lapse.

(f) For purposes of subdivision (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of appointment by someone other than such person shall not be considered a settlor of the trust.

(g)

(1) Notwithstanding § 66-3-310, no person shall bring an action with respect to a transfer of property to a spendthrift trust:

(A) If the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; or

(B) If the person becomes a creditor after the transfer is made, unless the action is commenced within two (2) years after the transfer is made; and

(2) If subdivision (g)(1) applies:

(A) A person shall be deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) No creditor shall bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and

convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person availing themselves of the benefits of this subsection;

(ii) For purposes of subdivision (g)(2)(C), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subdivision (g)(2)(C)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a spendthrift trust;

(3) Notwithstanding subdivision (g)(2)(C), in the same manner as provided other than by this section to trusts in general, a beneficiary, settlor, cotrustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust advisor, trust protector or any of their predecessors; however, no such claim shall arise solely because a person availed themselves, or attempted to avail themselves, of the benefits of this subsection;



(4) If more than one transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action pursuant to this subsection with respect to a prior transfer of property to the spendthrift trust; and any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust;

(5) With the exception of any claim brought pursuant to subdivision (g)(3), notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date such action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be barred pursuant to this subsection; and

(6) This subsection shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

SECTION 22. Tennessee Code Annotated, Section 35-15-506, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-506 Distributions relative to support, mandatory and certain reminder interests.**

(a) Relative to a support interest, whether or not a trust contains a spendthrift provision:

(1) Although a beneficiary of a support interest has enforceable rights under § 35-15-814, those rights do not raise the beneficiary's support interest to the level of a property interest;

(2) No creditor or assignee shall reach that support interest until a distribution from the support interest is actually made to the beneficiary;

(3) After all or a portion of a support interest is distributed to the beneficiary, no portion of the distribution made from the support interest shall be reached by a creditor or assignee of the beneficiary except to the extent that the distribution made from the support interest exceeds the amount necessary for the health, education, maintenance and support of the beneficiary who received the distribution made from the support interest;

(4) In the case of a beneficiary who holds a support interest, the use or enjoyment of property belonging to the trust by that beneficiary shall not be transferred and shall not be reached by creditors or assignees of that beneficiary;

(5) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a support interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary; and

(6) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a support interest.

(b) Relative to a mandatory interest, whether or not a trust contains a spendthrift provision:

(1) While a court may order a trustee or other fiduciary to distribute a past due mandatory distribution to its beneficiary, no court shall order a trustee or other fiduciary to distribute such past due mandatory distribution directly to a creditor or assignee;

(2) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a mandatory interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(3) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a mandatory interest.

(c) Although a remainder interest may be an enforceable right, where it is not absolutely certain based on the language of the trust that the remainder interest will be distributed within one (1) year, it shall not be classified as a property interest. This subsection does not affect eligibility for any public assistance program administered by the department of human services.

SECTION 23. Tennessee Code Annotated, Title 35, Chapter 15, Part 5 is amended by adding the following new section:

**35-15-508. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors -- Interests of beneficiary who is also a trustee or other fiduciary not reachable.**

(a) No creditor or assignee of a beneficiary shall have the power to reach an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee or other fiduciary. Such power over a trustee or other fiduciary is personal to the holder and shall not be exercised by the holder's creditors. No court shall direct a holder to exercise the power.

(b) Subject to § 35-15-504(b)(3):

(1) No creditor or assignee of a beneficiary may reach an interest of a beneficiary who is also a trustee, cotrustee or other fiduciary, or otherwise compel a distribution because the beneficiary is then serving as a trustee, cotrustee or other fiduciary; and

(2) No court may foreclose against a beneficiary's interest described in subdivision (b)(1).

SECTION 24. Tennessee Code Annotated, Title 35, Chapter 15, Part 5 is further amended by adding the following new section:

**35-15-509. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited -- Certain reaches prohibited.**

Regardless of whether or not a trust contains a spendthrift provision:

(1) No beneficial interest, power of appointment, or reserved power in a trust shall be judicially foreclosed;

(2) No creditor or assignee shall reach a power of appointment or a remainder interest at the trust level and such creditor or assignee shall wait until any funds are distributed relative to such power of appointment or remainder interest before such creditor or assignee may reach such funds; and

(3) No power of appointment is a property interest.

SECTION 25. Tennessee Code Annotated, Section 26-4-101 is amended by deleting the language “§§ 35-15-501 – 35-15-507” and substituting instead the language “§§ 35-15-501 – 35-15-509”.

SECTION 26. Tennessee Code Annotated, Section 35-15-703, is amended by adding a new subsection (i) as follows:

(i) A trustee shall keep each cotrustee and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee has knowledge that each such cotrustee or other fiduciary does not have such knowledge of the trustee's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each such cotrustee or other fiduciary to perform his or her duties as a trustee or other fiduciary of the trust.

SECTION 27. Tennessee Code Annotated, Section 35-15-708, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-708. Compensation of trustees, trust advisors and trust protectors.**

(a) If the terms of a trust do not specify a trustee's, trust advisor's or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in § 35-15-103(13)(A), have not otherwise agreed, a trustee, trust advisor or trust protector is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify a trustee's, trust advisor's or trust protector's compensation, the trustee, trust advisor or trust protector is entitled to be compensated as specified in the trust, but the court may allow more or less compensation if:

(1) The duties of the trustee, trust advisor or trust protector are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor or trust protector that is regulated by the department of financial institutions, the equivalent regulatory agency of another state, the office of the comptroller of the currency or the office of thrift supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

SECTION 28. Tennessee Code Annotated, Section 35-15-709, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A trustee, trust advisor or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance, either by the trustee, trust advisor or trust protector or by a person named in § 35-15-701(c)(1), of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 29. Tennessee Code Annotated, Title 35, Chapter 15, Part 7 is amended by adding the following new sections:

**35-15-710 Directed trusts.**

If the terms of the trust, an agreement of the qualified beneficiaries, or a court order requires a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with such direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

**35-15-711 Directed Trusts; Accepting or declining fiduciary appointment.**

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(a), may accept their appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-701(a).

(b) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(b), may reject their appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-701(b).

(c) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(c), may, without accepting their appointment as such respective fiduciary, carry out the appropriate activities relative to such respective fiduciary as are provided for a trustee under § 35-15-701(c).

**35-15-712 Directed Trusts; Fiduciary's bond.**

(a) Section 35-15-702 relative to trustee's bonds apply to trust advisors, trust protectors or other fiduciaries other than cotrustees, such cotrustees already being provided for in § 35-15-702.

(b) When exercising its powers under this section relative to bonds, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

**35-15-713 Vacancy; Directed Trusts.**

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable is filled.

(b) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust. § 35-15-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the sixty-day period immediately following the date the trustee obtains knowledge of such vacancy.

**35-15-714 Directed Trusts; Resignation of fiduciary.**

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's resignation already being provided for in § 35-15-705, may resign their

appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

**35-15-715 Directed Trusts; Removal of fiduciary.**

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's removal already being provided for in § 35-15-706, may be removed as such respective fiduciary in a like manner as provided for a trustee under § 35-15-706.

(b) When exercising its powers under this section relative to removal of such respective fiduciary, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

SECTION 30. Tennessee Code Annotated, Section 35-15-802(g)(5) is amended by deleting that subdivision and by substituting instead the following:

(g)

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in § 35-15-103, as well as any other fiduciary; and

SECTION 31. Tennessee Code Annotated, Section 35-15-808 is amended by deleting subsections (b), (d) and (e) and by substituting instead new subsections (b), (d), (e) and (f) as follows:

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.



(d) Unless the terms of a trust provide otherwise, if a person holds a power to perform any act in reliance on §§ 35-3-122 and 35-3-123, and that power holder is other than a beneficiary, that person is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to perform any act under this subsection is liable for any loss that results from breach of a fiduciary duty. In so following the directions of such person the trustee is protected from liability as provided in §§ 35-3-122 and 35-3-123.

(e) If a person holds a power to direct pursuant to part 12 of this chapter, that person is a trust advisor, trust protector or both. Such power holder is subject to all the provisions of part 12, including any duties prescribed by part 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under part 12 is relieved of any duty or any liability, or is otherwise protected under part 12, shall be so relieved and otherwise protected.

(f) Transitional provisions applicable to this section shall be as follows:

(1) Powers to direct or perform any act held in reliance on or that are subject to §§ 35-3-122 and 35-3-123 that are in existence prior to July 1, 2013, remain effective thereafter and remain subject to the provisions of those sections and their protections;

(2) Notwithstanding subdivision (f)(1), should any power that is described in part 12 of this chapter be held under a trust instrument that was in existence or became irrevocable before July 1, 2013, and that power is not held in reliance on nor is it subject to §§ 35-3-122 and 35-3-123, then from July 1, 2013, all law relative to such power shall be controlled by and subject to part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12; and

(3) For all trust instruments entered into, that become irrevocable or that are amended relative to any power that is described in part 12 of this chapter on

or after July 1 2013, part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12, shall be the exclusive method to create a directed trust or a provision regarding such and shall control such. Relative to trusts described in this subdivision and subdivision (f)(2), §§ 35-3-122 and 35-3-123 shall be of no further force and effect.

SECTION 32. Tennessee Code Annotated, Section 35-15-813 is amended by adding a the following new subdivision (a)(3):

(a)

(3) The requirements of subdivisions (a)(1) and (a)(2) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment.

SECTION 33. Tennessee Code Annotated, Section 35-15-813 is further amended by deleting subsection (b) and substituting instead the following:

(b) The trustee of an irrevocable or non-grantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, that the trust has been established.

SECTION 34. Tennessee Code Annotated, Section 35-15-813 is further amended by adding a new subdivision (b)(2)(D) as follows:

(b)

(2)

(D) If for anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, all of the information required by subdivisions (b)(2)(A) through (C) necessary or

beneficial for that person to effectively determine whether or not to exercise that power of appointment.

SECTION 35. Tennessee Code Annotated, Section 35-15-813 is further amended by deleting subsections (c) through (e) and substituting new subsections (c) through (e) and adding a new subsection (h) as follows:

(c) Upon the termination of an interest of any one (1) or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment by sending or delivering to such person the notice required in subsection (b).

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given. Anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment has the same power as provided a beneficiary in this subsection to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that the terms of the trust provide otherwise or the settlor of the trust, or a trust protector or trust advisor under part 12 that holds the power to so direct, directs otherwise in a writing delivered to the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection shall affect the limitation on the liability of any excluded fiduciary provided by part 12 of this chapter.

SECTION 36. Tennessee Code Annotated, Section 35-15-814, is amended by deleting the section in its entirety and substituting instead the following:

**35-15-814. Exercise of Powers Over Discretionary and Other Interests; Tax Savings.**

(a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the settlor's spouse is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, prior to making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three circumstances listed in subdivision (b)(2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, in the event that the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

SECTION 37. Tennessee Code Annotated, Section 35-15-816(b)(19), is amended by deleting the phrase "provided, however, that this power shall not apply to any beneficiary's interest that is subject to a spendthrift provision;".

SECTION 38. Tennessee Code Annotated, Section 35-15-816(b)(27), is amended by adding the following new subdivisions:

(E) The exercise of the power to appoint principal under subdivision (b)(27)(A) shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;

(F) The second trust:

(i) May confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal of the original trust;

(ii) The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust; and

(iii) The power of appointment conferred upon a beneficiary must preclude any exercise that would extend the permissible period of the rule against perpetuities that applies to the trust;

(G) If any contribution to the original trust qualified for the annual exclusion under § 2503(b) of the Internal Revenue Code, the marital deduction under §§ 2056(a) or 2523(a) of the Internal Revenue Code, or the charitable deduction under §§ 170(a), 642(c), 2055(a) or 2522(a) of the Internal Revenue Code, is a direct skip qualifying for treatment under § 2642(c) of the Internal Revenue Code, or qualified for any other specific tax benefit that would be lost by the existence of the authorized trustee's authority under subdivision (b)(27)(A) for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code, then the authorized trustee shall

not have the power to distribute the principal of a trust pursuant to subdivision (b)(27)(A) in a manner that would prevent the contribution to the original trust from qualifying for or would reduce the exclusion, deduction, or other tax benefit that was originally claimed with respect to that contribution;

(H) During any period when the original trust owns stock in an subchapter S corporation as defined in § 1361(a)(1) of the Internal Revenue Code, an authorized trustee shall not exercise a power authorized by subdivision (b)(27)(A) to distribute part or all of the stock of the S corporation to a second trust that is not a permitted shareholder under § 1361(c)(2) of the Internal Revenue Code;

(I) This section applies to any trust that is administered in this state; and

(J) For purposes of this section, the term "original trust" refers to the trust from which principal is being distributed and the phrase "second trust" refers to the trust to which assets are being distributed from the original trust.

SECTION 39. Tennessee Code Annotated, Section 35-15-901, is amended by deleting the section in its entirety and by substituting instead the following:

**35-15-901. Uniform Principal and Income Act and Tennessee Uniform Prudent Investor Act of 2002 incorporated by reference**

Title 35, chapter 6 and chapter 14 are incorporated in this chapter by reference.

SECTION 40. Tennessee Code Annotated, Section 35-15-1005, is amended by adding the following new sections:

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the



trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the cotrustee or a former trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trustee or a former trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(j) Notwithstanding subsections (d) – (i), no trustee, trust advisor or trust protector, may commence a proceeding against a trustee or a former trustee if, under §

35-15-1005 (a) – (c) , none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for such breach of trust.

SECTION 41. Tennessee Code Annotated, Title 35, Chapter 15, Part 10 is amended by adding the following as a new, appropriately numbered section:

**§ 35-15-1014. Enforcement of No-contest, In Terrorem or Forfeiture Provisions.**

(a) For the purposes of this section, "no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) Regardless of whether or not the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the presence or absence of probable cause for, or the beneficiary's good or bad faith in, taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue influence, lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be unenforceable to the

extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust.

(c) Subsection (b) shall not apply to:

(1) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(2) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including without limitation any nonjudicial settlement agreement;

(3) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(4) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(5) Any action brought by the attorney general for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

SECTION 42. Tennessee Code Annotated, Section 35-15-1101, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-1101.

(a) Numerous provisions of each of the following have been modified extensively relative to their respective uniform acts as such uniform acts were drafted and have been amended by the Uniform Law Commission, also known as the National Conference of Commissioners of Uniform State Laws:

- (1) Chapter 6, the Uniform Principal and Income Act;
  - (2) Chapter 14, the Tennessee Uniform Prudent Investor Act of 2002;
- and

(3) Chapter 15, the Tennessee Uniform Trust Code.

(b) These modifications were undertaken deliberately and after significant consideration:

(1) Therefore, in applying and construing title 35, no consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states, including any other state that has enacted laws covering the same general subject matter as chapters 9, 14 or 15, either by enacting such respective uniform acts as such uniform acts were originally drafted or as such were originally drafted and subsequently have been amended, or by enacting laws based on or similar to such uniform acts as originally drafted or as such have been amended; and

(2) Unless specifically provided otherwise in this chapter, chapter 6 or chapter 14, courts shall not consult, rely on or give any persuasive value to such uniform acts or any respective other state's acts based on or similar to such uniform acts, or any comments accompanying any such uniform acts or any respective other state's acts based on or similar to such uniform acts; none of which have any force or effect relative to trusts governed by the laws of this state.

SECTION 43. Tennessee Code Annotated, Title 35, Chapter 15, is amended by adding the following as a new part 12:

**§ 35-15-1201. Powers of Trust Advisors and Trust Protectors.**

(a) A trust protector or trust advisor is any person, and may be a committee of more than one person, other than a trustee, who under the terms of the trust, an

agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one (1) or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any non-charitable interest or purpose and may not grant a beneficial interest in any

trust to the trust protector or trust advisor, or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to appoint under § 35-15-816(b)(27);

(15) The power to terminate all or part of a trust;

(16) The power to veto or direct all or part of any trust distribution;

(17) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(18) The power to make loans out of trust property, including but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(19) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(20) The power to select one (1) or more investment advisers, managers or counselors, including but not limited to, a trustee and delegate to them any of its powers; and

(21) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of §§ 35-15-410 through 35-15-412 and 35-15-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust if the trust instrument allows for such.

**§ 35-15-1202. Trust Advisors and Trust Protectors as Fiduciaries.**

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

**§ 35-15-1203. Trust Advisor and Trust Protector Subject to Court Jurisdiction.**

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

**§ 35-15-1204. No Duty to Review Actions of Trustee, Trust Advisor, or Trust Protector.**

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to § 35-15-813, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order; such administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector or any of their agents or persons they have selected to provide services to the trust, shall



not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee, trust advisor, or trust protector's authority.

**§ 35-15-1205. Fiduciary's Liability for Action or Inaction of Trustee, Trust Advisor, and Trust Protector.**

An excluded fiduciary is not liable, either individually or as a fiduciary, for:

- (1) Any loss resulting from compliance with a direction of a trust advisor or trust protector, including but not limited to, any loss from the trust advisor or trust protector breaching fiduciary responsibilities or acting beyond the trust advisor's or trust protector's scope of authority;
- (2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or
- (3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

**§ 35-15-1206. Limitation of Action Against a Trust Advisor or Trust Protector.**

(a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trust advisor or trust protector;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trust advisor or trust protector;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the other trust advisor or other trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) – (i), no trustee, trust advisor or trust protector, may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) – (c) or § 35-15-1005 (a) – (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

SECTION 44. Tennessee Code Annotated, Section 35-16-102, is amended by adding a new subdivision(14) as follows:

(14) Unless the context or a provision contained in this chapter provides otherwise, throughout this chapter, any form of the word "trustee," whether singular or plural means "trustee, cotrustee or any other fiduciary" as fiduciary is defined at § 35-15-103 relative to any power or duty held by such fiduciary that could otherwise be held by a trustee, to the extent that such fiduciary is holding such a power or duty and is not an excluded fiduciary as defined at § 35-15-103 relative to that power or duty.

SECTION 45. Tennessee Code Annotated, Section 35-16-104, is amended by deleting the language "foreign court" in subdivision (i)(2)(A)(i) and replacing them with "court of another state as defined by § 35-15-103".

SECTION 46. Tennessee Code Annotated, Section 35-16-104, is further amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b)

(1) Notwithstanding § 66-3-310, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to an investment services trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to an investment services trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subdivision (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to an investment services trust at the time any public record is made of any transfer of property relative to such qualified disposition, including but not limited to, the conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to a transfer of property made relative to a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer relative to the qualified disposition was made with the intent to defraud that specific creditor.

SECTION 47. Tennessee Code Annotated, Section 35-16-104, is further amended by adding a new subsection (k) as follows:

(k) In addition to the provisions of subsection (j) to the extent subsection (j) applies to the laws of any foreign country:

(A) For all purposes under this chapter, the effect of the laws of any foreign country shall be the same as provided in § 35-15-107(b)(3) and (b)(4); and

(B) Subsection (a) applies in addition to all other provisions of this chapter.

SECTION 48. The topic headings and tag-lines in this act are for reference purposes only and do not constitute a part of the law enacted hereby. However, the Tennessee Code Commission is requested to include such descriptive headings in any compilation or publication containing the provisions of this act, and to make any conforming adjustments in other provisions of Title 35 which are amended or revised. Furthermore, the Tennessee Code Commission is requested to change the following topic headings and tag-lines as follows:

(1) **35-15-108. Place of administration – Sufficient nexus for a state jurisdiction provision - Place of administration.**

(2) Tennessee Code Annotated, Title 35, Chapter 15, Part 5; replace the current heading - tag line of the part with the following:

**Part 5—Creditor's Claims — Mandatory, Support and Discretionary Interests – Effect of Spendthrift Provision**

(3) Tennessee Code Annotated, Title 35, Chapter 15, Part 9; replace the current heading - tag line of the part with the following:

**Part 9—"Uniform Principal and Income Act" and "Tennessee  
Uniform Prudent Investor Act of 2002" Incorporated**

(4) § 35-15-1005; replace the current heading - tag line of the section with the following:

**§ 35-15-1005. Limitation of action against trustee by a beneficiary;  
Limitation of action against trustee by a trustee, trust advisor or trust  
protector.**

(5) Tennessee Code Annotated, Title 35, Chapter 15, Part 12; make the heading - tag line of the part the following:

**Part 12—Trust Protectors and Trust Advisors**

SECTION 49. The Tennessee Code Commission is requested to publish in the Tennessee Code Annotated the revisions required to conform to the current state of the law official comments for Chapters 6, 14, 15 and 16 of Title 35 that are filed with the executive secretary of the Tennessee Code Commission by June 15, 2013, unless a later date is provided by said secretary, by members of the Estate and Probate Section of the Tennessee Bar Association, the Probate Study Committee of the Tennessee Bar Association and the Trust Committee of the Tennessee Bankers Association.

SECTION 50.

(a) This act shall take effect July 1, 2013, the public welfare requiring it.

(b) Except as otherwise provided in this act, on such effective date:

(1) This act applies to all trusts created before, on, or after such effective date;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after such effective date;

(3) This act applies to judicial proceedings concerning trusts commenced before such effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this act applies to trust instruments executed before such effective date unless there is a clear and express indication of a contrary intent in the terms of the trust; and

(5) An act done before such effective date is not affected by this act.

(c) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before such effective date, that statute continues to apply to the right even if it has been repealed or superseded.



SA0260

Amendment No. 1

  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3/27/13</u>
Time	<u>11:05</u>
Clerk	<u>JG</u>
Comm. Amdt.	<u>1</u>

**AMEND Senate Bill No. 714\***

**House Bill No. 1282**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-1351(c), is amended  
by deleting subdivision (10) and substituting the following:

(10) That the applicant is not an unlawful user of or addicted to alcohol,  
any controlled substance or controlled substance analogue, and the applicant  
has not been either:

(A) A patient in a rehabilitation program pursuant to a court order  
or hospitalized for alcohol, controlled substance or controlled substance  
analogue abuse or addiction pursuant to a court order within ten (10)  
years from the date of application; or

(B) A voluntary patient in a rehabilitation program or voluntarily  
hospitalized for alcohol, controlled substance or controlled substance  
analogue abuse or addiction within three (3) years from the date of  
application;

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring  
it.



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Amendment No. 1



SA0280

*C. [Signature]*

Signature of Sponsor

<b>FILED</b>	
Date	<u>3.27.13</u>
Time	<u>5:15 P.M.</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 727\***

**House Bill No. 715**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 4, Part 1, is

amended by adding the following language as a new section:

68-4-113. Notwithstanding any law to the contrary, the coroner, medical investigator or county medical examiner may direct the cremation of an unclaimed dead body; provided:

- (1) Proper notice is given in accordance with § 68-4-103; and
- (2) The body is held for the time period provided in § 68-4-103.

SECTION 2. Tennessee Code Annotated, Section 68-4-103(a), is amended by deleting the subsection and by substituting instead the following:

(a) Whenever a person dies in any hospital, infirmary, mental health institute, poorhouse, penitentiary, house of correction, workhouse, jail, or other charitable or penal institution that is supported in whole or in part at public expense, or whenever a body is delivered to a public official for the purpose of determining the cause of death or for the purpose of burial of the body or the cremated remains at public expense, it is the duty of the public official or of the custodian, superintendent or active head of such institution to immediately notify the nearest relative of the person, if any relative be known, of the person's death.

SECTION 3. Tennessee Code Annotated, Section 68-4-103(b)(1), is amended by deleting the language "made for its interment" and substituting instead "made for its interment by burial of the body or the cremated remains".



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SECTION 4. Tennessee Code Annotated, Section 68-4-103(c), is amended by deleting the subsection and by substituting instead the following:

(c) If the chief medical examiner or the chief medical examiner's representative, upon receipt of the notification, does not, within seventy two (72) hours, make a demand for the body, then the body or the cremated remains shall be buried as provided by law or cremated in accordance with § 68-4-113. The public official or the custodian, superintendent or active head of such institution as referred to in subsection (a) may, in such person's discretion, choose to have the body cremated prior to burial.

SECTION 5. Tennessee Code Annotated, Section 38-5-118, is amended by deleting the section in its entirety and substituting instead the following language:

After the inquisition, the coroner or medical investigator may deliver the body of the deceased to the deceased's relatives, if there are any; but if not, the coroner or the medical investigator shall cause the deceased to be decently buried or cremated in accordance with § 68-4-113, and the expense to be paid from the property found with the body, or, if there is none, from the county treasury, by certifying an account of the expenses to the county mayor, who shall allow and pay the expenses, if deemed reasonable, as other claims on the county.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.



SA0155

Amendment No. 1

  
Signature of Sponsor

<b>FILED</b>	
Date	<u>8/19/13</u>
Time	<u>9:05</u>
Clerk	<u>PRB</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 728\***

**House Bill No. 954**

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 25, Part 1, is amended by adding a new, appropriately designated section as follows:

**8-25-113.**

The trustees of any deferred or tax sheltered compensation plans established pursuant to this part are expressly authorized to contract for investment management services, personal services, professional services and consultant services for the deferred compensation programs. The trustees shall provide for the powers, duties, functions and compensation of any investment managers, professionals or consultants so engaged. Any contract for investment management services, personal services, professional services and consultant services may be procured in the manner prescribed by the trustees without regard to the requirements of § 12-4-109, if it is determined that the services are necessary or desirable for the efficient administration of the deferred compensation programs. All expenses and fees incidental to the procurement of services shall be charged to and paid from participant accounts.

SECTION 2. Tennessee Code Annotated, Section 49-7-805(5), is amended by deleting this subsection in its entirety and substituting it instead with the following language:

(5) Contract with financial consultants, actuaries, auditors, investment managers and other consultants and professionals as necessary to carry out its responsibilities under this part. These services may be procured in the manner prescribed by the board



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without regard to the requirements of § 12-4-109, if the board determines that the services are necessary or desirable for the efficient administration of the board programs. All expenses and fees incidental to securing these services shall be charged to and paid from earnings.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.



SA0281

Amendment No. 1

Signature of Sponsor

<b>FILED</b>
Date <u>3.27.13</u>
Time <u>5:15 PM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 745**

**House Bill No. 532\***

By deleting the language in subsection (b) in the amendatory language of SECTION 1 of the bill and by substituting instead the following language:

(b) If a physician has determined, after a mammogram is performed, that a patient has dense breasts or extremely dense breasts, based on the breast imaging reporting and data system established by the American college of radiology, the facility where the mammogram was performed shall provide the following notice to the patient:

Your mammogram shows that your breast tissue is dense. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.

(c) This section shall become operative on January 1, 2014. Nothing in this section shall be construed to create or impose liability for failing to comply with the requirements of this section. Nothing in this section shall be deemed to create a duty of care or other legal obligation beyond the duty to provide notice as set forth in this section. Nothing in this section shall be deemed to require a notice that is inconsistent with the provisions of the federal mammography quality standards act, as complied in 42 U.S.C. § 263b or any regulations promulgated pursuant to that act.



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**AND FURTHER AMEND** by deleting the effective date section and by substituting instead the following:

SECTION 2. This act shall take effect January 1, 2014, the public welfare requiring it.

Senate Health and Welfare Comm. Am. #2

Amendment No. 2



SA0282

*Crowe*

Signature of Sponsor

<b>FILED</b>	
Date	<u>3.27.13</u>
Time	<u>5:15PM</u>
Clerk	<u>JO</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 745**

**House Bill No. 532\***

by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION \_\_\_\_ This act may be known and cited as "The Breast Cancer Prevention Act."



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SA0199

Amendment No. 1

*Kelley*  
\_\_\_\_\_  
Signature of Sponsor

FILED	
Date	<u>3-21-13</u>
Time	<u>9:30 AM</u>
Clerk	<u>JO</u>
Comm. Amdt.	_____

**AMEND** Senate Bill No. 749\*

House Bill No. 693

by deleting subsection (c) from the amendatory language in Section 1 of the bill.

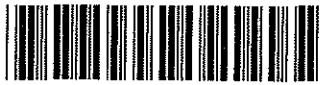


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SA0265

Amendment No. 2

*Kelsey*  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3/27/13</u>
Time	<u>11:05</u>
Clerk	<u>JG</u>
Comm. Amdt.	<u>2</u>

**AMEND Senate Bill No. 749\***

**House Bill No. 693**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-6-106, is amended by adding the following as a new subsection:

(e) The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.



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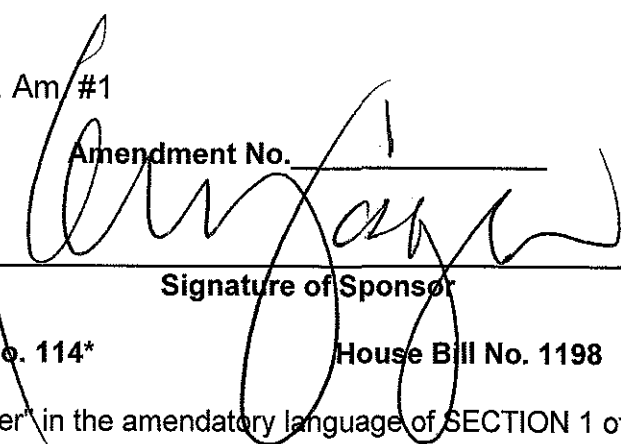
\*005321\*

Senate State & Local Comm. Am/ #1



SA0099

Amendment No. 1

  
Signature of Sponsor

**AMEND Senate Bill No. 114\***

**House Bill No. 1198**

By deleting the language "gender" in the amendatory language of SECTION 1 of the bill and substituting instead the language "sex".

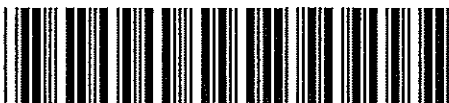
**FILED**

Date 3/13/13

Time 1:15 pm

Clerk MA

Comm. Amdt. 1



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SA0203

Amendment No. \_\_\_\_\_

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Signature of Sponsor

FILED	
Date	<u>3-21-13</u>
Time	<u>9:30 AM</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 114\***

**House Bill No. 1198**

By deleting the word "candidate" both times it appears in subsection (e) of the amendatory language of SECTION 1 and substituting instead the word "applicant".



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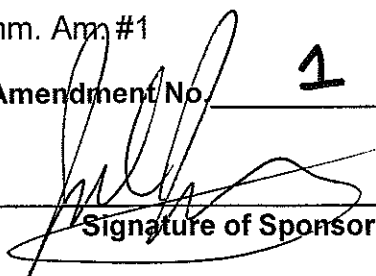


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SA0132

Amendment No. 1

  
Signature of Sponsor

FILED
Date <u>3-14-13</u>
Time <u>9:35am</u>
Clerk <u>PO</u>
Comm. Amdt. _____

**AMEND Senate Bill No. 436**

**House Bill No. 263\***

By deleting Section 1 and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 62-32-321(e), is amended by deleting the language "twenty-five dollars (\$25.00)" and substituting the language "fifty dollars (\$50.00)".



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SA0125

Amendment No. 1  
Signature of Sponsor

<b>FILED</b>	
Date	<u>3-14-13</u>
Time	<u>9:35am</u>
Clerk	<u>JD</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 609\*****House Bill No. 1000**

by deleting the language "specific entertainment event" in subdivision (7)(A) in § 62-45-103 in Section 1 of the printed bill and substituting instead the language "specific entertainment event or athletic contest".

AND FURTHER AMEND by deleting the language "62-46-104." in Section 1 of the printed bill and substituting instead the language "62-45-104."

AND FURTHER AMEND by deleting the language "active" in subsection (a) in the new § 62-45-104 in Section 1 of the printed bill and substituting instead the language "valid".

AND FURTHER AMEND by deleting the language "an effective" in subsection (a) in the new § 62-45-104 in Section 1 of the printed bill and substituting instead the language "a valid".

AND FURTHER AMEND by deleting subdivision (a)(1) in the new § 62-45-104 in Section 1 of the printed bill and redesignating the existing subdivisions accordingly.

AND FURTHER AMEND by deleting the language "website" in subsection (b) in the new § 62-45-104 in Section 1 of the printed bill and substituting instead the language "web site".

AND FURTHER AMEND by deleting the language "or had restoration of such person's citizenship pursuant to title 40, chapter 29." in subsection (b) in the new § 62-45-104 and substituting instead the language "or had such person's citizenship rights restored pursuant to title 40, chapter 29."

AND FURTHER AMEND by deleting the language "on ticket" in subdivision (a)(3) in § 62-45-105 in Section 1 of the printed bill and substituting instead the language "on the ticket".

AND FURTHER AMEND by deleting the language "62-46-108" in Section 1 of the printed bill and substituting instead the language "62-45-108".



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AND FURTHER AMEND by deleting the language "civil remedy provided for herein" in the new § 62-45-108 and substituting instead the language "civil remedy provided in § 62-45-111".

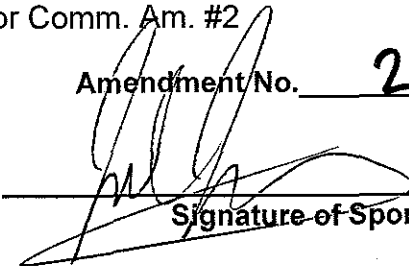
AND FURTHER AMEND by deleting subsection (a) in § 62-45-112 in Section 1 of the printed bill and substituting instead the following:

(a) The applications for registration held by the department pursuant to this chapter shall be open to public inspection in accordance with the open records laws compiled in title 10, chapter 7, part 5.



SA0126

Amendment No. 2

  
Signature of Sponsor

FILED	
Date	3-14-13
Time	9:35am
Clerk	JTO
Comm. Amdt.	

**AMEND Senate Bill No. 609\***

**House Bill No. 1000**

by deleting all language after the enacting clause and by substituting instead the following:

**SECTION 1.** Tennessee Code Annotated, Title 62, is amended by adding the following language as a new, appropriately designated chapter:

**62-45-101.**

This chapter shall be known and may be cited as the "**Fairness in Ticketing Act of 2013.**"

**62-45-102.** The general assembly finds:

(1) The sports and entertainment industries are among this state's most important, attracting millions of paying fans to games, concerts and performances, generating hundreds of millions of dollars of economic impact and creating a cultural brand known to fans around the world;

(2) A free market for tickets in the sports and entertainment industry is too often violated by bad actors in the ticket resale market who prey on fans of live entertainment in this state;

(3) Professional scalpers routinely purchase as many of the best seats as possible the second they go on sale, often using computer software in violation of this state's law to facilitate those purchases, and hide behind the anonymity of the Internet, for the sole purpose of reselling tickets to make a profit, depriving consumers of the opportunity to purchase tickets at the price set by performers, clubs and arenas along with depriving artists and sports clubs of the ability to set prices for their own performances;



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(4) A free market depends on informed consumers, yet professional scalpers rarely inform consumers about original ticket prices, or that consumers are shopping on ticket resale web sites where prices often exceed face value, or that the seats offered on these web sites may not be in the possession of the professional scalpers; and

(5) The general assembly must act to ensure a free market for tickets whereby consumers know what they are buying, artists and teams have the ability to ensure that fans have access to great seats at fair prices, and deceptive, anonymous resale and deceptive Internet marketing practices are prohibited.

**62-45-103.** As used in this chapter:

(1) "Affinity group":

(A) Means an identifiable group of people who receive special privileges as members of the group and who:

(i) Are members of the same organization; or

(ii) Are customers of the same person; and

(B) Does not mean customers of a reseller;

(2) "Athletic contest" means:

(A) Any intercollegiate sporting event;

(B) Any sporting event staged by any professional club; or

(C) Any sporting event staged by any sanctioning body;

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Department" means the department of commerce and insurance;

(5) "Entertainment event" means any performance of music, comedy, dance, film, lecture or theater, or exhibition of art, for which an admission price is charged;

(6) "Face value" means the face price of a ticket, as determined by the event presenter and printed on the ticket, inclusive of all applicable taxes, service charges and fees;

(7) "Initial sale" means:



(A) The first sale of a ticket for a specific entertainment event or athletic contest by:

(i) The owner or operator of a place of entertainment or of the entertainment event or athletic contest; or

(ii) An agent of any such owner or operator;

(B) "Initial sale" includes the distribution of tickets by a producer, promoter, or place of entertainment, pursuant to a written agreement for the presentation of an entertainment event or athletic contest;

(8) "Online marketplace":

(A) Means an Internet web site that provides a forum for the buying and selling of tickets; and

(B) Does not include a reseller, ticket issuer or an agent of an owner or operator of a place of entertainment;

(9) "Original purchaser" means a person who buys one (1) or more tickets to an athletic contest or entertainment event with the intention of using such tickets solely for the use by such person or the original purchaser's invitees or agents;

(10) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or combination of individuals or legal entities;

(11) "Place of entertainment" means any entertainment facility within this state, whether publicly or privately owned or operated, such as a theater, stadium, museum, arena, racetrack or other place where entertainment events or athletic contests are held, and for which an admission fee is charged;

(12) "Pre-sale" means a sale of tickets, conducted prior to any sale to the general public to members of an affinity group by a person who is:

(A) An owner or operator of a place of entertainment; or

(B) An agent of an owner or operator of a place of entertainment;

(13) "Producer" means a person who stages entertainment events, such as a performance, concert, exhibit, game or athletic contest, held at a place of entertainment;

(14) "Professional club" means any club organized under the rules and regulations of:

(A) Major League Baseball;

(B) The National Association of Professional Baseball Clubs;

(C) The National Football League;

(D) The National Basketball Association;

(E) The Southern Professional Hockey League; or

(F) The National Hockey League;

(15) "Promoter" means a person who organizes financing and publicity for an entertainment event;

(16) "Public sale tickets" means tickets that are offered for sale to the general public;

(17) "Resale" means a sale, other than a pre-sale or initial sale, of a ticket by a person other than the owner or operator of a place of entertainment, or an agent of any such person;

(18) "Resale web site" means an Internet web site, or portion of a web site, whose primary purpose is to facilitate the resale of tickets to consumers;

(19) "Resell" means to offer for resale or to consummate a resale;

(20) "Reseller" means any person who resells a ticket;

(21) "Sanctioning body" means:

(A) Any association that organizes and sanctions national sporting competitions, whether professional or amateur, including, but not limited to, the Professional Golf Association, United States Golf Association, NASCAR, the U.S. Tennis Association, World Tennis Association, U.S. Olympic Committee, and Ultimate Fighting Championship; and

(B) Organizations that sanction individuals or teams for participation in international sporting competitions on behalf of the United States;

(22) "Ticket" means a printed, electronic or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right;

(23)

(A) "Ticket broker" means any person in the business of reselling tickets to events at places of entertainment in this state, and who charges a premium in excess of the face value of the ticket;

(B) "Ticket broker" does not include:

(i) An individual who does not regularly engage in the business of reselling tickets, who resells less than sixty (60) tickets during any one-year period, and who initially obtained any tickets he or she sold to others for personal use, or the use of immediate family members, friends or known acquaintances; or

(ii) Any person operating an Internet web site whose primary business is to serve as a resale marketplace whereby third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets; and

(24) "Ticket issuer":

(A) Means any person, other than an online marketplace or reseller, that makes tickets available directly or indirectly, at an initial sale or pre-sale, to the general public; and

(B) May include the owner or operator of a place of entertainment, the producer or sponsor of an entertainment event, a sports team or sports league of teams participating in an entertainment event, a theater company, musical group

or similar participant in an entertainment event, or an agent of any such person mentioned in this subdivision (24)(B).

**62-45-104.**

(a) A ticket broker shall register with the department within one hundred eighty (180) days of the effective date of this act or within thirty (30) days of commencing business as a ticket broker in this state, whichever is later, and maintain a valid registration with the department. To have and maintain a valid registration, a ticket broker shall:

(1) Maintain a permanent office or place of business in this state for the purpose of engaging in the business of a ticket broker;

(2) Submit the ticket broker's business name, a Tennessee street address, and other information as requested on a form designated by the department;

(3) Certify the broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purposes of interfering with the operations of any ticket seller, in violation of § 39-17-1105;

(4) Pay an annual registration fee as determined by the department sufficient to reimburse the department for the administration of this chapter;

(5) Renew the registration annually; and

(6) Register for sales and use tax purposes pursuant to title 67, chapter 6, part 6.

(b) Upon registration, the department shall issue each ticket broker a unique registration number, and publish a list of registered ticket brokers, including registration numbers, on the department's web site. No person shall register as a ticket broker who has been convicted of a felony and who has not been pardoned or had such person's citizenship rights restored pursuant to title 40, chapter 29.

**62-45-105.**

(a) In order to ensure that consumers of tickets for resale are fully informed as to the nature of resale transactions, a ticket broker shall:

(1) Post at its established place of business, and on any web site operated or employed by the ticket broker, the terms of the purchaser's right to cancel the purchase of a ticket from the ticket broker;

(2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled; and

(3) Disclose to any prospective ticket resale purchaser, whether on ticket broker's resale web site or in person, prior to any resale, the difference between the face value of the ticket and the amount the ticket broker is charging the purchaser for such ticket.

(b) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast or Internet advertising shall include in such offering the registration number issued by the department to such ticket broker.

**62-45-106.**

(a) Resale web sites offering tickets to any entertainment event or athletic contest shall disclose, clearly and conspicuously, to any web site user in this state the following information:

(1) The face value and exact location of the seat offered for sale, including any section, row or seat number, or specifically designated as accessible seating printed on the ticket;

(2) If operated by a ticket broker, the broker's active registration number issued by the department;

(3) Whether the ticket offered for sale is within the actual possession of the reseller and available for delivery;

(4) Whether the reseller is actively seeking to procure the ticket; and

(5) If the ticket is not in the physical possession of the reseller, the period of time when the reseller reasonably expects to have the ticket in hand and available for delivery.

(b) Resale web sites shall disclose to users, clearly and conspicuously, any other disclosures required by this chapter, including the nature of the resale web site as a secondary web site, and that prices on the resale web site often vary from the initial sale price.

(c) To the extent that any use by a resale web site of a uniform resource locator (URL) incorporates a trademark rightfully owned by another, except in the post-domain path of the URL, such that said incorporation amounts to a violation of federal trademark law, such violation shall be a violation of the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

**62-45-107.**

Nothing in this chapter shall prohibit the resale of a ticket.

**62-45-108.**

The owner or operator of a place of entertainment may eject or refuse entry to the holder of any ticket for reason of illegal activity, misconduct, or any failure of the ticket holder to comply with any and all policies established by the place of entertainment.

**62-45-109.**

Any ticket broker who violates this chapter is subject to the suspension or revocation of its registration by the department. In addition to any civil remedy provided in § 62-45-111, any person who knowingly violates this chapter commits a Class B misdemeanor offense; punishable only by fine.

**62-45-110.**

(a) This chapter shall not apply to any sale of tickets made pursuant to the Tennessee Education Lottery Implementation Law, compiled in title 4, chapter 51.

(b) This chapter shall not apply to any sale of tickets made by the operator, convention and visitors bureau, or of any hotel or other place of public accommodation, as described in title 62, chapter 7.

**62-45-111.**

Any person aggrieved by any violation of this chapter may file a written complaint with the division of consumer affairs or the attorney general and reporter. The attorney general and reporter shall have authority to investigate and remediate any violation of this chapter, pursuant to title 47, chapter 18.

**62-45-112.**

(a) The applications for registration held by the department pursuant to this chapter shall be open to public inspection in accordance with the open records laws compiled in title 10, chapter 7, part 5.

(b) All official records of the department, or affidavits by the commissioner as to the contents of the records, shall be prima face evidence of all matters required to be kept in the records.

(c) Written complaints made pursuant to § 62-45-111 shall be available for inspection and copying.


**SECTION 2.** The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

**SECTION 3.** For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect October 1, 2013, the public welfare requiring it.



SA0235

Amendment No. <sup>3</sup>

  
Signature of Sponsor

<b>FILED</b>	
Date	3/28/13
Time	10:48
Clerk	JW
Comm. Amdt.	

**AMEND Senate Bill No. 609\***

**House Bill No. 1000**

by deleting § 62-45-107 in Section 1 of the bill as amended by amendment drafting #4456 and substituting instead the following:

§ 62-45-107.

(a) Nothing in this chapter shall prohibit the resale of a ticket.

(b) It shall be an unfair and deceptive act or practice under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, for any ticket issuer, promoter, owner or operator of a place of entertainment, or any agent of such issuer, promoter, owner or operator to:

(1) Impose any terms or conditions on a ticket that would prohibit a person from reselling a ticket on online marketplaces not owned or operated by a ticket issuer, promoter, or owner or operator of a place of entertainment, or any agent of such issuer, promoter, owner or operator;

(2) Use technology to restrict a person's ability to resell a ticket;

(3) Restrict printing or forwarding of a ticket; or

(4) Impose any pick-up or transfer restrictions that have the practical effect of limiting the person's ability to resell a ticket.



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SA0236

Amendment No. 4  
Signature of Sponsor

FILED

Date 3/25/13Time 11:45Clerk JG

Comm. Amdt. \_\_\_\_\_

AMEND Senate Bill No. 609\*

House Bill No. 1000

by adding the following language as a new appropriately designated subsection to § 62-45-107  
in Section 1 of the bill as amended and substituting instead the following:

Nothing in this chapter shall prohibit the transfer of a ticket as a gift. For  
purposes of this section, "gift" means the transfer of a ticket for which no payment or  
consideration is expected or received.



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Amendment No. 5

*Leifager*  
Signature of Sponsor

<b>FILED</b>	
Date	<u>4/1/13</u>
Time	<u>11:48</u>
Clerk	<u>JG</u>
Comm. Amdt.	_____

**AMEND Senate Bill No. 609\***

**House Bill No. 1000**

by deleting § 62-45-107 and § 62-45-108 from SECTION 1 of the bill and by substituting instead the following language:

**62-45-107.**

Nothing in this chapter shall prohibit the resale of a ticket.

**62-45-108.**

No ticket issuer, owner, or operator of a place of entertainment shall void any ticket because the ticket was offered for sale on any online marketplace not owned or operated by the ticket issuer, or because the ticket was presented for admission by a person other than the original purchaser.



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SA0326

Amendment No. 6

Signature of Sponsor

FILED

Date 4/1/13Time 11:48Clerk JG

Comm. Amdt. \_\_\_\_\_

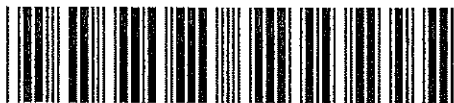
AMEND Senate Bill No. 609\*

House Bill No. 1000

by deleting § 62-45-111 from SECTION 1 of the bill and by substituting instead the following language:

**62-45-111.**

Any person aggrieved by any violation of this chapter may file a written complaint with the division of consumer affairs. The attorney general and reporter shall have authority to enforce any violation of this chapter, pursuant to title 47, chapter 18.



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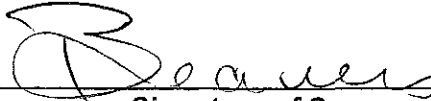
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SA0348

Amendment No. 7  
Signature of Sponsor

FILED
Date <u>4.3.13</u>
Time <u>10:22 AM</u>
Clerk <u>80</u>
Comm. Amdt. _____

AMEND Senate Bill No. 609\*

House Bill No. 1000

by adding the following new appropriately designated section to Section 1 of the bill as amended.

62-45-1\_\_.

(a) Any ticket issuer, promoter, owner or operator of a place of entertainment, or any agent of such issuer, promoter, owner or operator shall provide public notice at the time of any pre-sale and at the time of the initial sale of the number of public sale tickets available.

(b) The notice required by subsection (a) shall be posted conspicuously on any web site and at any physical location where public sale tickets are issued for entertainment events and athletic contests.



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SA0349

Amendment No. 8

  
Signature of Sponsor

FILED
Date <u>4.3.13</u>
Time <u>10:35 AM</u>
Clerk <u>JD</u>
Comm. Amdt. _____

AMEND Senate Bill No. 609\*

House Bill No. 1000

by deleting the language "Resale web sites" in subsection (a) in § 62-45-106 in Section 1 of the bill as amended and substituting instead the language "Ticket issuers, their agents and resellers on resale web sites".



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Amendment No. 1

*Kelsey*

Signature of Sponsor

FILED

Date 2/20/2013

Time 2:42 pm

Clerk MM

Comm. Amdt. 1

AMEND Senate Bill No. 622

House Bill No. 197\*

by deleting in the language "any method reasonable under the circumstances" in the  
amendatory language of SECTION 6 of the bill as introduced and substituting instead the  
language "generally accepted accounting principles".



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SA0097

Amendment No. 1

Signature of Sponsor

AMEND Senate Bill No. 907

House Bill No. 703\*

<b>FILED</b>	
Date	<u>3/13/13</u>
Time	<u>1:15 pm</u>
Clerk	<u>AA</u>
Comm. Amdt.	<u>1</u>

by adding the following language after the last sentence of § 2-3-301(c) in Section 1 of the bill:

The coordinator of elections shall not approve more than five (5) counties to participate in the described pilot project for the 2014 election cycle.

AND FURTHER AMEND by deleting the language "certified by the coordinator of elections" in the first sentence of § 2-3-302(c) in Section 1 of the bill and substituting instead the language "certified by the administrator of elections".

AND FURTHER AMEND by designating the existing language in § 2-3-307 in Section 1 of the bill as subsection (b) and by adding the following language as subsection (a):

(a) No later than January 15 following any election conducted under the pilot project, each participating county election commission must submit to the coordinator of elections a report which describes the results of the pilot project. The report must include, but not be limited to,

- (1) A description on the number of vote centers used;
- (2) The number of voters who cast ballots at each vote center;
- (3) The number of voting stations within each vote center;
- (4) The number of election officials at each vote center;
- (5) The number of parking places available to voters at the vote centers;
- (6) The number of accessible parking places for voters at the vote

centers;

- (7) The actual increase or decrease in cost for the election; and



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(8) Any, comments, complaints, and suggestions, if any, that were received from voters and candidates.




Senate State & Local Comm. Am. #2



SA0100

Amendment No. 2

  
Signature of Sponsor

**AMEND Senate Bill No. 907**

**House Bill No. 703\***

By adding the following language after the last sentence of § 2-3-301(c) in Section 1 of the bill:

Any necessary expenditures required to implement the plan shall be subject to  
appropriation by the county legislative body.

<b>FILED</b>	
Date	<u>3/13/13</u>
Time	<u>1:15</u>
Clerk	<u>AA</u>
Comm. Amdt.	<u>2</u>



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